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MEMORANDUM OF AGREEMENT

RE: THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

This Memorandum of Agreement (Agreement) is hereby entered into between the U.S. Department of Education (Department) and the District of Columbia Office of the State Superintendent of Education (the OSSE) as of the 16th day of November, 2009 (the Effective Date).

I. BACKGROUND

A. *OSSE*

The District of Columbia has one geographic local educational agency (LEA), the District of Columbia Public Schools (DCPS) which serves approximately 62% of District public school students and 57 public charter school LEAs which together serve approximately 38% of District public school students. Under local law, any charter school LEA can elect to have DCPS serve as its LEA for purposes of the Individuals with Disabilities Education Act (IDEA). Currently, 16 charter LEAs elect to have DCPS serve as their LEA while 41 remain independent LEAs for purposes of the IDEA. The OSSE was established in October 2007 as the District's first stand-alone state education agency under the Public Education Reform Amendment Act of 2007.

The IDEA requires each State receiving Part B funds to satisfy certain requirements and requires the Department to make a determination of each State's status of compliance on an annual basis. The Office of Special Education Programs (OSEP) within the Office of Special Education and Rehabilitative Services is the office within the Department that administers Part B of the IDEA.

B. *The Department's "Needs Intervention" Determination*

On June 1, 2009, OSEP issued a letter to OSSE informing them of the Department's intent to withhold 20 percent of OSSE's Federal Fiscal Year (FFY) 2009 funds reserved for State-level activities under section 611(e) of the IDEA based on its determination that OSSE "needs intervention" in implementing the requirements of the IDEA for the third consecutive year [the Department's determination letter is attached hereto as Exhibit 1].¹

Specific factors affecting OSEP's June 1, 2009 determination of "needs intervention" under Part B of the IDEA included that the District of Columbia: (1) did not provide any FFY 2007 data for compliance Indicators 9 and 10 (disproportionate representation), and 17 (timeliness of due process decisions); (2) reported 29.15% compliance for Indicator 13 (secondary transition), which represented slippage from the 54% compliance rate last year, and did not demonstrate correction of the noncompliance; and (3) failed to meet the longstanding Special Conditions imposed on its FFY 2008 grant under Part B of the IDEA related to the following key requirements for providing a free appropriate public education to children with disabilities: timely initial evaluations and reevaluations, timely implementation of hearing officer determinations (HODs), placement in the least restrictive environment, and identification and

¹ That is, the 2005-2006, 2006-2007 and 2007-2008 school years.

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correction of noncompliance. The Department provided OSSE the opportunity to contest the Department's determination of "needs intervention," to request a hearing to appeal the Department's decision to withhold funds, and to show cause in writing why funds should not be suspended pending the outcome of the hearing.

C. *OSSE's Response and Status of Department's Determination*

On June 16, 2009, the OSSE responded to the Department's June 1, 2009 determination letter [OSSE's responsive letter is attached hereto as Exhibit 2]. The OSSE did not contest the Department's determination of "needs intervention. The response requested a hearing to appeal the Department's decision to withhold State-level funds and included information intended to show cause why the Department should not suspend payment of those funds pending the outcome of the hearing. In its June 16, 2009 letter and subsequent correspondence, the OSSE documented several initiatives that it has undertaken to correct deficiencies, presented interim data demonstrating progress and noted the District's institutional commitment to reform its special education programs.

In a June 30, 2009 letter, the Department confirmed that it had granted the OSSE's request for a hearing to appeal the Department's decision to withhold 20 percent of the OSSE's FFY 2009 State-level funds under IDEA section 611(e) [the Department's letter is attached hereto as Exhibit 3]. The Department acknowledged that improvements have been made, but concluded that the OSSE did not provide sufficient cause why the Department should not suspend payment of these funds pending the outcome of the hearing. Therefore, the FFY 2009 Part B grant award to the District of Columbia notified the State that the Department suspended payment on July 1, 2009 of \$479,959, out of the OSSE's total State set-aside of \$2,399,795 under IDEA section 611(e) and out of its total regular and American Recovery and Reinvestment Act of 2009 (ARRA) FFY 2009 section 611 and section 619 grants of \$33,922,108. In addition, the grant award included Special Conditions requiring that the OSSE address the areas of longstanding noncompliance and two additional areas of noncompliance that were factors in OSEP's determination of "needs intervention."

D. *OSSE's Steps to Improve Compliance*

Since the OSSE's inception in October 2007, the Department recognizes that the OSSE has taken the following steps to improve IDEA compliance:

- OSSE implemented and administered a new, electronic docketing system in the District of Columbia's Student Hearing Office.
- OSSE issued a state-level Inclusion Policy to its LEAs regarding the IDEA's requirements that children be educated in the least restrictive environment.
- OSSE successfully piloted a nonpublic placement review policy in school year (SY) 2008-2009 which, through technical assistance and formal recommendations to LEAs about how to serve children in the least restrictive environment within the LEA resulted in more children being served in LEAs rather than in nonpublic settings.

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- OSSE procured a new state-level Special Education Data System (SEDS) in its first year as an independent SEA, has developed the system with input from LEAs and other key stakeholders and now requires all LEAs and nonpublic schools to use SEDS and certify the accuracy of the LEA's data submissions beginning with SY 2009-2010.
- OSSE, after funding a multi-million dollar contract for evaluation services to supplement LEA capacity in SY 2007-2008, recognized that helping LEAs come into compliance with the evaluation and reevaluation requirements of the IDEA required taking a multi-faceted approach beyond mere increases in funding and resources, and therefore issued a new state policy on evaluations and reevaluations; redesigned SEDS modules related to evaluations to align with the new policy; and provided significant technical assistance to LEAs on evaluation and reevaluation compliance requirements starting in SY 2008-2009.
- OSSE overhauled hearing officer recruitment, selection, training, evaluation and accountability systems – successfully replacing the hearing officer corps and contracting a new independent Chief Hearing Officer.
- OSSE pro-actively sought technical assistance from the Department regarding the collection, maintenance and reporting of accurate data and the creation and implementation of an effective system of general supervision over the District's LEAs.
- OSSE disclosed in its FFY 07 APR that the measurements for Indicators 9 and 10 inherited from the OSSE's predecessor did not allow the State to accurately report valid data to ensure equity and the protection of all children's student rights – primarily because more than 80% of children attending public schools in the District of Columbia are African-American and an overwhelming number of the District's LEAs predominantly serve African American students – and simultaneously accessed technical assistance from the Department to remedy the problem upon determining that the current definitions would not produce valid data.

II. PURPOSE OF AGREEMENT

The Department and the OSSE enter into this Agreement: (a) to establish benchmarks and reporting requirements for actions to be taken by the OSSE to bring the OSSE into substantial compliance with the IDEA in those areas cited by the Department as a basis for its determination that the OSSE "needs intervention," and (b) to resolve their dispute over the status of State-level funds withheld by the Department from the FFY 2009 Part B grant award to the OSSE.

In addition, on the effective date of this Agreement, the OSSE hereby agrees to file a motion to dismiss with prejudice its hearing request currently pending before the Department's Office of Administrative Hearings and Appeals. The OSSE further acknowledges that the Department intends to continue to designate the District of Columbia as a "high risk" grantee during the term of this Agreement. However, the Department agrees that the FFY 2009 Special Conditions on Part B funds will be modified to align with the reporting under this Agreement to avoid

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duplication and reduce the burden of the reporting. The modified FFY 2009 Special Conditions on Part B funds will require the OSSE to submit the benchmark target reports required under this Agreement in addition to the October 1, 2009 FFY 2009 Special Conditions Progress Report already submitted by the OSSE.

OSEP staff has provided extensive technical assistance and guidance on Part B of the IDEA to the OSSE staff through on-site visits, and telephone consultation and electronic mail (email) correspondence. On average, OSEP responds to the OSSE's telephone and email requests for guidance at least weekly. In addition, OSEP has made technical assistance available through the OSEP-funded technical assistance network, in particular, the Data Accountability Center, Mid-South Regional Resource Center, and National Early Childhood Technical Assistance Center. Given the OSSE's continued designation as needing intervention in implementing the requirements of Part B of the IDEA, the Department will continue to provide on-site technical assistance, advise the State of sources of available technical assistance, and make reasonable efforts to respond to the OSSE's requests for technical assistance. Nothing in this Agreement is intended to prohibit or restrict the OSSE's ability to obtain technical assistance from other sources, as it determines appropriate and necessary, to achieve compliance with the requirements of Part B of the IDEA.

III. BENCHMARKS AND EVIDENCE TO ESTABLISH SUBSTANTIAL COMPLIANCE

As reflected in its June 1, 2009 letter, the Department based its determination on the following areas of the OSSE's noncompliance with IDEA requirements:

- Timely performance of initial evaluations and reevaluations.
- Timely implementation of hearing officer decisions.
- Timely identification and correction of noncompliance and effective monitoring to ensure placement in the least restrictive environment.
- Valid and reliable data for Indicators 9 and 10 (disproportionate representation) and Indicator 17 (timeliness of due process hearings).
- Compliance with secondary transition requirements.

This Agreement sets out the specific benchmarks that the OSSE must meet by certain dates. The OSSE must report on those dates, consistent with the terms below, whether it has met the benchmarks.

The OSSE shall, pursuant to this Agreement, provide six reports (in addition to its Annual Performance Report or APR). The OSSE shall include data from all LEAs, including charter school LEAs, and provide the required content related to each benchmark. In addition, each report shall be submitted to the Department in accordance with the reporting periods and timelines specified below.

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Report	Reporting Period	Report Due Date
First Report	September 4, 2009 – December 4, 2009	January 11, 2010
Second Report	December 5, 2009 – March 5, 2010	April 1, 2010
Third Report	March 6, 2010 – June 6, 2010	July 1, 2010
Fourth Report	June 7, 2010 - September 1, 2010	October 1, 2010
Fifth Report	September 2, 2010 – December 1, 2010	January 10, 2011
Sixth Report	December 2, 2010 – February 1, 2011	March 1, 2011

A. Initial Evaluations and Reevaluations

- With respect to initial evaluations, the OSSE shall meet the benchmarks set forth below.

Benchmark Target Date	Evidence Standard
01/11/2010	<ul style="list-style-type: none">• Seventy-five percent of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.• Forty-five percent of children (a) who as of the end of the previous reporting period (September 3, 2009), had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period. (See section 2.A 1. (a),(b), and (c) of Enclosure E of the July 1, 2009 FFY 2009 Part B grant award letter. To calculate the percentage: (c) divided by (a) + (b) times 100).
04/01/2010	<ul style="list-style-type: none">• Eighty percent of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.

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Benchmark Target Date	Evidence Standard
	<ul style="list-style-type: none">• Fifty-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.
07/01/2010	<ul style="list-style-type: none">• Eighty-five percent of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.• Sixty-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.• The average number of days the initial evaluations and placements that had not been provided in a timely manner were overdue decreases from the reporting period of April 19, 2009-September 3, 2009.
10/01/2010	<ul style="list-style-type: none">• Ninety percent or more of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.• Seventy-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.• The average number of days the initial evaluations and placements that had not been provided in a timely manner were overdue decreases from the previous reporting period.
1/10/2011	<ul style="list-style-type: none">• Ninety-five percent or more of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.• Eighty-five percent or more of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial

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Benchmark Target Date	Evidence Standard
	<p>evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.</p> <ul style="list-style-type: none"> The average number of days the initial evaluations and placements that had not been provided in a timely manner were overdue decreases from the previous reporting period.
3/1/2011	<ul style="list-style-type: none"> Ninety-five percent or more of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.

- With respect to reevaluations, the OSSE shall meet the benchmarks set forth below.

Benchmark Target Date	Evidence Standard
01/11/2010	<ul style="list-style-type: none"> Seventy percent of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner. Forty-five percent of children (a) who, as of the end of the previous reporting period (09/03/2009), had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period. (See section 2.A 2. (a),(b), and (c) of Enclosure E of the July 1, 2009 FFY 2009 Part B grant award letter. To calculate the percentage: (c) divided by (a) + (b) times 100).
04/01/2010	<ul style="list-style-type: none"> Seventy-five percent of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner. Fifty-five percent of children (a) who, as of the end of the previous

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Benchmark Target Date	Evidence Standard
	reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period.
07/01/2010	<ul style="list-style-type: none">• Eighty percent of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.• Sixty-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period.• The average number of days the reevaluations that had not been provided in a timely manner were overdue decreases from the reporting period of April 19, 2009-September 3, 2009.
10/01/2010	<ul style="list-style-type: none">• Eighty-five percent or more of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.• Seventy-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period.• The average number of days the reevaluations that had not been provided in a timely manner were overdue decreases from the previous reporting period.
1/10/2011	<ul style="list-style-type: none">• Ninety percent or more of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.• Eighty-five percent or more of children (a) who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial

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Benchmark Target Date	Evidence Standard
	reevaluations during the reporting period. <ul style="list-style-type: none">• The average number of days the reevaluations that had not been provided in a timely manner were overdue decreases from the previous reporting period.
3/1/2011	<ul style="list-style-type: none">• Ninety-five percent or more of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.• Ninety-five percent or more of children (a) who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period.

B. *Implementation of Hearing Officer Decisions*

- The OSSE shall meet the benchmarks set forth below.

Benchmark Target Date	Evidence Standard
01/11/2010	<ul style="list-style-type: none">• Fifty percent of hearing officer determinations² were implemented in a timely manner during the reporting period.• Eighty percent of children whose hearing officer determinations, as of the end of the previous reporting period (September 3, 2009), had not been implemented within the required time frame (backlog) and whose hearing officer determinations had not been implemented within the required time frame during the reporting period had hearing officer determinations implemented during the reporting period. (See section 2.B.1. (a),(b), and (c) of Enclosure E of the July 1, 2009 FFY 2009 Part B grant award letter. To calculate the percentage: (c) divided by (a) + (b) times 100).

² For purposes of this benchmark, "hearing officer determinations" does not include settlement agreements and the benchmark is calculated on a per child basis, not per hearing officer determination in cases where the same child has more than one hearing officer determination.

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Benchmark Target Date	Evidence Standard
04/01/2010	<ul style="list-style-type: none">• Sixty percent of hearing officer determinations were implemented in a timely manner during the reporting period.• Eighty-five percent of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the required time frame (backlog) and whose hearing officer determinations had not been implemented within the required time frame during the reporting period had hearing officer determinations implemented during the reporting period.
07/01/2010	<ul style="list-style-type: none">• Seventy percent of hearing officer determinations were implemented in a timely manner during the reporting period.• Ninety percent of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the required time frame (backlog) and whose hearing officer determinations had not been implemented within the required time frame during the reporting period had hearing officer determinations implemented during the reporting period.
10/01/2010	<ul style="list-style-type: none">• Eighty percent or more of hearing officer determinations were implemented in a timely manner during the reporting period.• Ninety-five percent or more of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the required time frame (backlog) and whose hearing officer determinations had not been implemented within the required time frame during the reporting period had hearing officer determinations implemented during the reporting period.
1/10/2011	<ul style="list-style-type: none">• Ninety percent or more of hearing officer determinations were implemented in a timely manner during the reporting period.
3/1/2011	<ul style="list-style-type: none">• Ninety-five percent or more of hearing officer determinations were implemented in a timely manner during the reporting period.

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C. *Identification and Correction Of Noncompliance And Ensuring Placement In The Least Restrictive Environment (LRE)*

- The OSSE shall meet the benchmarks set forth below.

Benchmark Target Date	Evidence Standard
01/11/2010 04/01/2010 07/01/2010 10/01/2010	<ul style="list-style-type: none">• Monitoring reports and/or other documents issued by the OSSE to individual LEAs during the reporting period identify areas of noncompliance with the IDEA, including if appropriate, noncompliance with the LRE requirements, and the basis for the OSSE's conclusion that there is noncompliance with the applicable requirements.
1/10/2011 3/1/2011	<ul style="list-style-type: none">• LEAs are notified in writing of any identified noncompliance no later than three months from the OSSE's discovery of the noncompliance.• LEAs are notified in writing of corrective actions required to remedy the noncompliance and that the noncompliance must be corrected as soon as possible and in no case later than one year from identification (i.e., the date on which the State provided written notification to the LEA of the noncompliance).• The OSSE shall, based on reporting it shall require from the District's LEAs, report on each LEA's provision of the continuum of services mandated by IDEA.• The OSSE shall report on January 11, 2010 whether each LEA has executed the OSSE mandated form certifying its participation in SEDS in order to meet the District's federal reporting requirements.• Starting with the April 1, 2010 report, the OSSE shall report whether each LEA has timely certified to the OSSE that the LEA has provided within SEDS the accurate, complete and up to date data required by the OSSE for IDEA compliance and federal reporting requirements.

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D. *Data for SPP/APR Indicators 9 and 10 (Disproportionate Representation Due to Inappropriate Identification) and 17 (Timeliness of Due Process Decisions)*

- The OSSE shall meet the benchmarks set forth below.

Benchmark Target Date	Evidence Standard
4/1/2010	<ul style="list-style-type: none">• The State timely reported on its APR due February 1, 2010, consistent with the required measurement and instructions, FFY 2008 data for Indicators 9 and 10 and FFY 2008 data from August 11, 2008 through June 30, 2009 for Indicator 17.

E. *Secondary Transition*

- The OSSE shall meet the benchmarks set forth below.

Benchmark Target Date	Evidence Standard
01/11/2010	<ul style="list-style-type: none">• The OSSE shall provide a detailed plan and timeline for completion of a random sampling of at least 100 individualized education programs (IEPs) of youth aged 16 and above to be reviewed for IEP secondary transition content during each of the subsequent reporting periods (which may include a procurement of these services from a vendor). The OSSE shall provide a copy of its communication to LEAs regarding the conduct of this sampling.
04/01/2010	<ul style="list-style-type: none">• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.• Of the IEPs randomly selected for review, seventy-five percent of youth aged sixteen and above had IEPs that included the required secondary transition content.
07/01/2010	<ul style="list-style-type: none">• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.

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Benchmark Target Date	Evidence Standard
	<ul style="list-style-type: none">• Of the student records reviewed, eighty percent of youth aged sixteen and above had IEPs that included the required secondary transition content.
10/01/2010	<ul style="list-style-type: none">• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.• Of the student records reviewed, eighty-five percent or more of youth aged sixteen and above had IEPs that included the required secondary transition content.
1/10/2011	<ul style="list-style-type: none">• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.• Of the student records reviewed, ninety percent or more of youth aged sixteen and above had IEPs that included the required secondary transition content.
3/1/2011	<ul style="list-style-type: none">• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.• Of the student records reviewed, ninety-five percent or more of youth aged sixteen and above had IEPs that included the required secondary transition content.

IV. RELEASE OF FUNDS WITHHELD FROM FFY 2009 PART B GRANT AWARD

The parties agree that the funds withheld from the FFY 2009 Part B grant award (the "Withheld Funds") will be released into the Department's GAPS/G5 account for the District of Columbia (i.e., subject to drawdown) upon execution of this Agreement. The Withheld Funds will be deposited into a separate account in GAPS/G5. However, the OSSE shall only drawdown those Withheld Funds after it has reported on the specified dates, consistent with the terms of this Agreement and the Department has provided written notice to the OSSE that it has successfully met the corresponding benchmarks for the reporting period. If the OSSE draws down Withheld Funds before the Department has provided written notice to the OSSE that the funds are released consistent with the terms of this Agreement or draws down funds in excess of the corresponding scheduled amounts on the table below, the Department will immediately terminate the

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Agreement and terminate any Withheld Funds drawn down in violation of this Agreement and terminate any remaining Withheld Funds not previously released. The OSSE waives its right to request an administrative or judicial hearing to challenge the Department's authority to recover or terminate these funds.

Report	Reporting Period	Report Due Date	Corresponding Scheduled Percentage of Withheld Funds
First Report	September 4, 2009 – December 4, 2009	January 11, 2010	25%
Second Report	December 5, 2009 – March 5, 2010	April 1, 2010	25%
Third Report	March 6, 2010 – June 6, 2010	July 1, 2010	20%
Fourth Report	June 7, 2010 - September 1, 2010	October 1, 2010	10%
Fifth Report	September 2, 2010 – December 1, 2010	January 10, 2011	10%
Sixth Report	December 2, 2010 – February 1, 2011	March 1, 2011	10%

If the Department determines that the OSSE has submitted a complete report that demonstrates that the OSSE meets all of the corresponding benchmarks by the target date, the Department will notify the OSSE that it may draw down the corresponding scheduled amount of Withheld Funds. The OSSE agrees not to draw down Withheld Funds from the GAPS/G5 system until it receives such notification from the Department. If the OSSE disagrees with the Department's determination regarding whether the OSSE has met the benchmarks, it may request a hearing with the Assistant Secretary for Special Education and Rehabilitative Services to show that the OSSE has met all of the corresponding benchmarks by the target date. The Assistant Secretary shall render a written decision within a reasonable time of the hearing. The OSSE waives any other administrative or judicial hearing regarding the decision of the Assistant Secretary on whether the OSSE has met all of the corresponding benchmarks for each reporting period.

Compliance in Advance of the Target Date. If the Department determines that the OSSE meets all of the benchmarks for any reporting period earlier than the corresponding target date, the Department will authorize the OSSE to draw down the corresponding scheduled amount of

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Withheld Funds at such time as the Department determines that the OSSE has demonstrated compliance.

Compliance after the Target Date. If the Department determines that the OSSE does not meet the benchmarks in one or more of the areas by the corresponding scheduled target date, the Department may notify the OSSE that the Department determines that it is releasing the corresponding scheduled amount of Withheld Funds if the OSSE subsequently reports and the Department determines that the OSSE has met the benchmarks in those areas. For example, if the Department determines that OSSE meets all of the benchmarks except for initial evaluations that were due on January 11, 2010, but meets the January 11th benchmark for initial evaluations on February 1, 2010, the Department may notify OSSE that it may draw down the corresponding scheduled amount of Withheld Funds when the Department's determination is made.

Substantial Compliance. In the event that the Department determines that the OSSE has achieved ninety-five percent or better compliance with one or more of the benchmarks that contain percentages, the Department shall notify the OSSE that it is in substantial compliance with the corresponding requirement and that it is no longer necessary to report on that requirement under the Agreement.

V. MODIFICATION

This Agreement may be modified by mutual consent of the parties and must be made in writing and signed by both parties to be effective. This requirement may be satisfied by an e-mail exchange between the parties or their designated agents that includes the substance of the modification and both parties' electronic signatures (e.g., "/s/ John Smith on behalf of the OSSE"). For purposes of this Agreement, the designated agents shall be:

For the Department:

Director of OSEP's Division of Monitoring and State Improvement Planning

For OSSE:

Assistant Superintendent for Special Education


Copies of all correspondence amending this Agreement shall be sent to the General Counsels of the Department and of the OSSE.

VI. AUTHORITY

This Memorandum of Agreement is entered into pursuant to the Secretary's authority under 34 C.F.R. §80.12 which authorizes the Secretary to impose special conditions and/or restrictions on a grantee whom the Department has determined has failed to comply with the terms and conditions of prior grant awards.

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FOR THE DISTRICT OF COLUMBIA:



Kerri L. Briggs, Ph.D.
State Superintendent of Education

Dated: the 2 day of December, 2009

FOR THE UNITED STATES DEPARTMENT OF EDUCATION:



Alexa Posny, Ph.D.
Assistant Secretary for Special Education and Rehabilitative Services

Dated: the 7 day of December, 2009

MOA EXHIBIT 1



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Kerri L. Briggs
Acting State Superintendent
Office of the State Superintendent
Government of the District of Columbia
441 4th Street, NW
Suite 350N
Washington, DC 20001

JUN - 1 2009

Dear Dr. Briggs:

Thank you for the timely submission of the District of Columbia's (D.C.'s) FFY 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA). We also acknowledge the revisions to D.C.'s APR received on April 7, 2009. We appreciate the State's efforts in preparing these documents.

The Department has determined pursuant to section 616(d) of the IDEA that D.C. needs intervention in meeting the requirements of Part B of the IDEA. The Department's determination is based on the totality of the State's data and information, including the State's FFY 2007 APR and revised SPP, other State-reported data, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Sections 616(d) of the IDEA in 2009" for further details.

Specific factors affecting OSEP's determination of needs intervention for D.C. under Part B of IDEA included that D.C.: (1) did not provide any FFY 2007 data for compliance Indicators 9, 10 (disproportionate representation) and 17 (timeliness of due process decisions); (2) reported 29.15% compliance for Indicator 13 (secondary transition), which represented slippage from the 54% compliance rate last year, and did not demonstrate correction of the noncompliance; and (3) failed to meet the longstanding Special Conditions imposed on its FY 2008 grant under Part B of the IDEA related to the following key requirements for providing a free appropriate public education to children with disabilities: timely initial evaluations and reevaluations, implementation of hearing officer determinations (HODs), placement in the least restrictive environment, and identification and correction of noncompliance.

D.C. has not provided valid and reliable data for compliance Indicators 9 and 10 for three years. OSEP's June 17, 2008 FFY 2006 SPP/APR response table required D.C. to provide the missing data for Indicators 9 and 10 in the FFY 2007 APR. D.C. reported in the FFY 2007 APR that valid and reliable data for FFY 2005 and FFY 2006 are unavailable. D.C. reported it was unable to provide FFY 2007 data on the number of districts that may have had disproportionate representation of racial or ethnic groups in special education and related services or in specific disability categories "due to the lack of valid and reliable data that would allow the State to determine whether there was disproportionate representation." Because this information is unavailable, D.C. reported it "is unable to make any determinations related to potentially inappropriate identification

practices." Disproportionate representation that is the result of inappropriate identification in special education and in specific disability categories are key compliance indicators under the monitoring and enforcement scheme established under section 616 of the IDEA. Without these data, OSEP and the public cannot assess whether any districts have disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that was the result of inappropriate identification.

D.C. has not provided valid and reliable data for compliance Indicator 17 for two years. OSEP's June 17, 2008 FFY 2006 SPP/APR response table required D.C. to provide the missing data for Indicator 17 in the FFY 2007 APR. D.C. reported it did not provide FFY 2007 data in the APR because it was determined that "the methods used prior to the August 11, 2008 implementation of the SHO [Student Hearing Office] Docketing System...were inadequately maintained and thus yielded unreliable data" and that it could not submit FFY 2006 data "because of the poor tracking system" in place during the FFY 2006 reporting period. Without these data, OSEP and the public cannot determine the percent of adjudicated due process hearing requests that met the timeline required by 34 CFR §300.515. This is a critical indicator because the issuance of timely final due process decisions is a key component of an effective due process system.

D.C. was required to report the percent of youth aged 16 and above with an individualized education program (IEP) that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals. D.C.'s very low level of compliance on this critical indicator (29.15%) demonstrates that D.C. is not ensuring that youth with disabilities aged 16 and above have an IEP that includes the required secondary transition content. In addition, D.C.'s compliance level has decreased from the low FFY 2006 compliance level of 54%. The State reported that one of seven findings of noncompliance identified in FFY 2006 related to this indicator was corrected in a timely manner. This is a critical indicator since inclusion of appropriate postsecondary goals and transition services in a student's IEP enables the student to make a successful transition from school to post-school activities, including postsecondary education, vocational education, integrated employment and independent living.

D.C. also failed to meet the Special Conditions imposed on its FFY 2008 grant award under Part B of the IDEA related to requirements regarding timely initial evaluations and reevaluations, implementation of HODs, and placement in the least restrictive environment. These issues were initially identified in the 1998-2001 Compliance Agreement between D.C. and the Department and have been Special Conditions on each IDEA Part B grant award from 2001 to the present. D.C. failed to meet the Special Condition related to identification and correction of noncompliance that was first imposed on the State's FFY 2005 grant and has continued on each IDEA Part B grant since that time. D.C.'s failure to correct this longstanding noncompliance directly affects the provision of special education and related services to children with disabilities.

OSEP's June 17, 2008 FFY 2006 SPP/APR response table noted that based on several of the reform initiatives described in D.C.'s June 2, 2008 Special Conditions Progress Report, we expected D.C. to make significant progress during the 2008-2009 school year in satisfying the Special Conditions and meeting the requirements of the IDEA. While

information in the three progress reports submitted under the FFY 2008 Special Conditions demonstrates some improvement, D.C. continues to report low levels of compliance with the requirements related to the timeliness of initial evaluations (56%), reevaluations (47.2%) and implementation of HODs (34.54%).

D.C. demonstrates continued noncompliance with the requirements to ensure timely initial evaluations and reevaluations. (Sections 612(a)(7) and 614(a) through (c) of the IDEA and 34 CFR §§300.301(c)(1) and 300.303) D.C. reported in the May 15, 2009 progress report that there were 432 children who had not been provided a timely initial evaluation and placement and 1,149 children who had not been provided a timely reevaluation as of April 18, 2009. The failure to provide a timely initial evaluation results in a delay in the provision of special education and related services to a child identified as a child with a disability, and without a timely reevaluation a child's disability status and the appropriateness of the child's educational goals and progress remain in question.

D.C. demonstrates continued noncompliance with the requirements to ensure due process decisions are implemented in a timely manner. (Sections 615(f) and (i) of the IDEA) D.C. reported in the May 15, 2009 progress report that there were 228 children whose HODs had not been implemented in a timely manner as of April 18, 2009. The failure to implement a HOD in a timely manner results in a child being denied services needed to ensure a free appropriate public education.

D.C. has not implemented a system of general supervision that ensures noncompliance is corrected in a timely manner. (Sections 612(a)(11) and 616(a) of the IDEA, 20 U.S.C. 1232d(b)(3), and 34 CFR §§300.149 and 300.600.) While the State has submitted a local educational agency (LEA) self-assessment and a monitoring manual with the May 15, 2009 progress report and has been working with the Data Accountability Center (DAC) to develop a general supervision system, that system has not yet been implemented. Therefore, OSEP is unable to determine if that system will be effective in identifying and correcting noncompliance. Although the State has reported specific activities undertaken to ensure children with disabilities are placed in the least restrictive environment appropriate to their individual needs, the State has not conducted general monitoring to ensure compliance with the requirements of section 612(a)(5)(A) of the IDEA and 34 CFR §§300.114 through 300.120.

Though not a basis for our determination, we are concerned with the very low levels of compliance reported for FFY 2007 for Indicator 11 (45.3%) on timeliness of initial evaluations and Indicator 15 (15.12%) on timely correction of noncompliance. We also note that due to problems in D.C.'s fiscal and program accountability, management systems, and related areas, the Department designated D.C. a "high risk" grantee under all grants received from the Department. D.C. continues to work on the Department's fiscal and programmatic concerns and its FFY 2009 grant award will again be subject to Department-wide Special Conditions.

Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), a State that is determined to need intervention or need substantial intervention, and does not agree with this determination, may request an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should

change the State's determination. To request a hearing, D.C. must submit a letter to Andrew J. Pepin, who has been delegated the authority to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services, at 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, D.C. 20202-2600 within 15 days of the date of this letter. The letter must include the basis for your request for a change in the State's determination.

The State's determinations for the FFY 2005 and FFY 2006 APRs also were needs intervention. In accordance with section 616(e)(2) of the IDEA and 34 CFR §300.604(b), if a State is determined to need intervention for three or more consecutive years, the Secretary may require any one or more of the enforcement actions specified under needs assistance in 34 CFR §§300.604(a), and shall take one or more of the following actions: (1) require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year; (2) require the State to enter into a compliance agreement if the Secretary has reason to believe that the State cannot correct the problem within one year; (3) withhold, not less than 20 percent and not more than 50 percent of the State's funds reserved for State-level activities under section 611(e) of the IDEA for each year of the determination until the Secretary determines that the State has sufficiently addressed the areas in which the State 'needs intervention'; (4) seek to recover Part B funds under Section 452 of the General Education Provisions Act (GEPA); (5) withhold, in whole or in part, any further payments of Part B funds to the State; or (6) refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

Given the nature of the noncompliance noted in this letter and that D.C. has had Special Conditions placed on its grant award under Part B of the IDEA since 2001, the Department has concluded that D.C. would be unable to correct its problems in one year. D.C. previously entered into a compliance agreement with the Department under the IDEA from 1998-2001, and it did not result in compliance. We therefore feel compelled to take a more serious enforcement action based on the magnitude of the noncompliance with the requirements of Part B of the IDEA and the length of that noncompliance. The Department has significant concerns about D.C.'s inability to correct areas of longstanding noncompliance that directly affect the appropriate provision of special education and related services to D.C.'s children with disabilities. As a result, pursuant to section 616(e)(2)(B)(iii) of the IDEA and 34 CFR §300.604(b)(2)(iii), the Department intends to withhold 20 percent of D.C.'s FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA until D.C. has sufficiently addressed the areas in which it "needs intervention."

In accordance with section 616(e)(4)(A) of the IDEA and 34 CFR §300.605(a), D.C. may request a hearing pursuant to the procedures in 34 CFR §§300.180 through 300.183 to appeal the Department's decision to withhold these funds. To request a hearing, D.C. must submit a letter to Andrew J. Pepin, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, D.C. 20202-2600 within 30 calendar days of the date of this letter. Any written submission by a party under 34 CFR §§300.179 through 300.184 must be filed by hand delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages. The filing date under 34

CFR §300.183(a) is the date the document is hand-delivered; mailed; or sent by facsimile transmission. See 34 CFR §300.183(a)-(b).

Pursuant to section 616(e)(4)(B) of the IDEA and 34 CFR §300.605(b), pending the outcome of any hearing to withhold payments, the Secretary intends to suspend payment of 20 percent of D.C.'s FFY 2009 funds reserved for State-level activities under section 611(e) of IDEA. D.C. has the opportunity to show cause in writing why future payments should not be suspended. To show cause, D.C. must submit a letter explaining why funds should not be suspended to Andrew J. Pepin, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, D.C. 20202-2600. Mr. Pepin must receive the letter within 15 calendar days of the date of this letter. If the Department determines that D.C. has failed to show cause why funds should not be suspended, the Department will suspend payment of 20 percent of DC's FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA.

The Department also is advising the State of technical assistance available related to the following Indicators: 9 and 10 (disproportionate representation); 13 (secondary transition); and 17 (timeliness of due process decisions). A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of the SPP/APR Planning Calendar website at <http://spp-apr-calendar.rfcnetwork.org/techassistance.html>. You will be directed to a list of indicators. Click on a specific indicator for a list of centers, documents, webinars and other sources of relevant technical assistance for that indicator.

The enclosed table provides OSEP's analysis of the State's FFY 2007 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. The table also identifies, by indicator, the State's status in meeting its targets, whether the State's data reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data.

As required by section 616(e)(7) of the IDEA and 34 CFR §300.606, the State must notify the public within the State that the Secretary of Education has taken the above enforcement action, including, at a minimum, by posting a public notice on the agency's website and distributing the notice to the media and through public agencies.

As you know, your State must report annually to the public on the performance of each local educational agency (LEA), i.e., the District of Columbia Public Schools and all charter schools that elect to be treated as LEAs for the purposes of IDEA, located in the State on the targets in the SPP as soon as practicable, but no later than June 2, 2009, pursuant to IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(A). In addition, your State must review LEA performance against targets in the State's SPP, determine if each LEA 'meets requirements', 'needs assistance', 'needs intervention, or 'needs substantial intervention' in implementing Part B of the IDEA, and inform each LEA of its determination. For further information regarding these requirements, see the SPP/APR Calendar at: <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/656>. Finally, if you included revisions to baselines, targets or improvement activities in your

APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

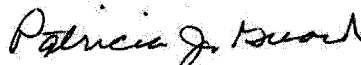
In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for States pursuant to section 616(d) of the IDEA. Most significantly, beginning with our 2010 determinations:

1. OSEP will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's noncompliance if the State's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
2. OSEP will credit a State with correction of noncompliance relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report, for each compliance indicator, whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

It is important for each State to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>.

OSEP is committed to working with D.C. to improve results for children and youth with disabilities. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Lisa Pagano, your OSEP State Contact, at (202) 245-7413.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education

How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2009: Part B

In making our determination for each State under section 616(d) of the Individuals with Disabilities Education Act (IDEA), we considered the State's FFY 2007 Annual Performance Report (APR)/State Performance Plan (SPP) submission, information from monitoring visits, including verification reviews, and other public information, such as the State's performance under any existing special conditions on its FFY 2008 grant or a compliance agreement, longstanding unresolved audit findings, and other State compliance data under the IDEA.

FFY 2007 APR/SPP Submissions

In reviewing the States' FFY 2007 APR/SPP submissions, we considered both the submission of valid and reliable data and the level of compliance or correction.

With respect to data, for Indicators 1 through 19, we examined whether the State provided valid and reliable FFY 2007 data (e.g., the State provided all the required data, the data were for the correct year and were consistent with the required measurement and/or the approved SPP, and the State did not indicate that its data were not valid and reliable). For the results indicators (Indicators 1, 2, 3, 4A, 5, 7, 8, 14, 18 and 19), if the State did not provide valid and reliable data, we considered whether the State provided a plan to collect the missing or deficient data for reporting in next year's APR/SPP submission. For Indicators 9, 10, 11, 12, 13, 15, 16, and 17, we also examined whether the State provided any FFY 2007 data, even if the data were not valid and reliable.

With respect to compliance, we examined Indicators 9, 10, 11, 12, 13, 15, 16, 17, and 20. With respect to these indicators, we looked for evidence that the State demonstrated substantial compliance either through reporting a very high level of compliance (generally 95% or better) or full correction of its FFY 2006 findings of noncompliance for Indicators 9, 10, 11, 12, and 13. If the State did not demonstrate either a very high level of compliance or full correction, we examined whether it nonetheless had maintained current levels, or made progress in ensuring compliance over its performance for that indicator as reported in its FFY 2006 SPP/APR submission. We considered "progress" to include reporting higher compliance numbers or reporting more accurate and complete compliance data compared to the data provided in the prior year's submission. Indicator 15 evaluates "timely" correction, so for this indicator we specifically examined whether the correction was timely. For the other compliance indicators, we considered both whether the State timely corrected its FFY 2006 findings of noncompliance and whether the State subsequently corrected findings of noncompliance. We did not consider Indicators 16 and 17 if the State reported less than 100% compliance, but fewer than 10 complaints or 10 fully adjudicated hearings, in recognition of the inequities in basing decisions on small numbers.

Generally, and absent any other issues (see below), we considered a State to "meet requirements" if it provided valid and reliable FFY 2007 data consistent with, or substantially the same as, the measurement for each indicator and/or the approved SPP, and demonstrated substantial compliance for Indicators 9, 10, 11, 12, 13, 15, 16, 17, and 20. We determined that a State demonstrated substantial compliance if it provided data showing a very high level of compliance (generally 95% or better) or that it had fully corrected previously identified noncompliance. (Beginning with the Department's determinations in 2010, we will require States to demonstrate correction of previously identified noncompliance consistent with OSEP's Memorandum, 09-02, dated October 17, 2008, and will not consider a State to be in substantial compliance based on correction if its reported FFY 2007 data are low (generally 75% or lower).) If a State did not meet these standards for only one

indicator, we considered the State to “meet requirements” if the compliance level for this indicator was high (generally 90% or better) or, for a data issue for a results indicator, if the State provided a plan to collect the data for next year. In no case, however, did we place a State in “meets requirements” if it failed to provide valid and reliable FFY 2007 data for compliance Indicators 9, 10, 11, 12, 13, 15, 16 or 17. We also considered whether the State, when it reported under Indicator 4A: (1) made clear that, if it identified any districts as having significant discrepancies in the discipline of children with disabilities, it reviewed and, if appropriate revised (or required the LEA to revise) its policies, procedures and practices related to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, as required by 34 CFR §300.170(b); and (2) if the State identified any noncompliance in policies, procedures or practices in these areas as a result of this review, corrected the noncompliance.

Generally, and absent any other issues (see below), we considered a State to be “in need of intervention” if it demonstrated very low performance for Indicators 9, 10, 11, 12, 13, 15, 16 or 17 (generally 50% or below, or in the case of Indicators 9 and 10, 50% or above, and such performance did not represent progress (as defined above) over the prior year’s compliance data), and did not demonstrate full correction of its FFY 2006 findings of noncompliance. We also identified a State “in need of intervention” if it did not provide any FFY 2007 data on Indicators 9, 10, 11, 12, 13, 15, 16 or 17 or if the data for these indicators were not valid and reliable (as defined above). We also identified a State “in need of intervention” if it did not provide valid and reliable FFY 2007 data on one of the results indicators and did not provide a plan to collect and report that data.

We would identify a State as “in need of substantial intervention” if its substantial failure to comply significantly affected the core requirements of the program, such as the delivery of services to children with disabilities or the State’s exercise of general supervision, or if the State informed the Department that it was unwilling to comply with an IDEA requirement. In making this determination, we would consider the impact of any longstanding unresolved issues on the State’s current implementation of the program. We would also consider identifying a State “in need of substantial intervention” for failing to submit its APR/SPP.

We determined that States that did not “meet requirements” and were not “in need of intervention” or “in need of substantial intervention” were “in need of assistance,” absent any other issues (see below).

Monitoring Data and Other Public Information

We also considered other public information available to the Department, including information from OSEP monitoring activities, performance under pre-existing special conditions, and longstanding audit findings. We did not consider a State to “meet requirements” if the State had unresolved special conditions that were imposed as a result of the State being designated as a “high risk” grantee, outstanding OSEP monitoring findings, including verification visit findings, or longstanding audit issues or a compliance agreement. We considered the length of time the problem had existed, the magnitude of the problem, and the State’s response to the problem, including progress the State had made to correct the problem, in determining whether the State should be identified as “in need of assistance,” “in need of intervention,” or “in need of substantial intervention.” Finally, for States with a current Compliance Agreement covering the requirements of one or more indicators, we did not consider the State to be “in need of intervention” based on those same indicators if the Compliance Agreement provided for the State to demonstrate compliance beyond the reporting period.

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
Status of Public Reporting on LEA Performance: The State has not publicly reported on the FFY 2006 performance of each local educational agency (LEA) located in the State on the targets in the State's performance plan as required by section 616(b)(2)(C)(i)(I) of IDEA.		
1. Percent of youth with IEPs graduating from high school with a regular diploma compared to percent of all youth in the State graduating with a regular diploma. [Results Indicator]	The State revised the improvement activities for this indicator and OSEP accepts those revisions. The State's FFY 2007 reported data for this indicator are 53.2%. These data represent progress from the FFY 2006 data of 39%. The State met its FFY 2007 target of 43%.	OSEP appreciates the State's efforts to improve performance.
2. Percent of youth with IEPs dropping out of high school compared to the percent of all youth in the State dropping out of high school. [Results Indicator]	The State revised the improvement activities for this indicator and OSEP accepts those revisions. The State's FFY 2007 reported data for this indicator are 2.9%. These data represent progress from the FFY 2006 data of 9.4%. The State met its FFY 2007 target of 6.8%.	OSEP appreciates the State's efforts to improve performance.
3. Participation and performance of children with disabilities on statewide assessments: A. Percent of districts that have a disability subgroup that meets the State's minimum "n" size meeting the State's AYP objectives for progress for disability subgroup. [Results Indicator]	The State revised the improvement activities for this indicator and OSEP accepts those revisions. The State's FFY 2007 reported data for this indicator are 0%. These data remain unchanged from the State's FFY 2006 data of 0%. OSEP's June 17, 2008 FFY 2006 SPP/APR response table required the State to include in the FFY 2007 APR, data for FFY 2005 and FFY 2006. The State reported recalculated FFY 2006 data of 0% and stated that "valid and reliable FFY 2005 data are unavailable for this indicator." The FFY 2006 SPP/APR response table also informed the State that OSEP could not determine whether the State's targets reflect the requirements for this indicator (i.e., percent of districts that have a disability subgroup that meets the State's minimum "n" size that meet the State's AYP objectives for progress for the disability subgroup) and encouraged the State to review its targets and revise them, as appropriate. OSEP required the State to provide documentation of any revisions to the targets with the FFY 2007 APR. The SPP posted on the State's website identifies the following targets for FFY 2007 for this indicator: "NCLB targets for reading: elementary, 65.16%;	OSEP looks forward to the State's data demonstrating improvement in performance in the FFY 2008 APR, due February 1, 2010.

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>3. Participation and performance of children with disabilities on statewide assessments:</p> <p>B. Participation rate for children with IEPs in a regular assessment with no accommodations; regular assessment with accommodations; alternate assessment against grade level standards; alternate assessment against alternate achievement standards.</p> <p>[Results Indicator]</p>	<p>secondary 56.84%; NCLB targets for mathematics: elementary 69.21%; secondary 59.91%.” The State did not specify an FFY 2007 target in its FFY 2007 APR and reported that “[d]ue to the lack of a prior established baseline with the SPP, the OSSE intends to update the baseline and targets for this indicator for FFY 2008 APR/SPP submission.” Therefore, OSEP is unable to determine whether the State met its target.</p> <p>The State’s FFY 2007 reported data for this indicator are 95.6%. The State provided a copy of Table 6 for the FFY 2006 reporting period with its FFY 2007 APR. Based on the data included in Table 6, OSEP recalculated the State’s FFY 2006 data to be 88.31%. The State’s FFY 2007 data represent progress from the FFY 2006 data.</p> <p>The State met its FFY 2007 target of 95%.</p> <p>OSEP’s June 17, 2008 FFY 2006 SPP/APR response table required the State to include in the FFY 2007 APR a copy of Table 6 for the correct reporting period. The State provided the required information.</p>	<p>OSEP appreciates the State’s efforts to improve performance.</p>
<p>3. Participation and performance of children with disabilities on statewide assessments:</p> <p>C. Proficiency rate for children with IEPs against grade level standards and alternate achievement standards.</p> <p>[Results Indicator]</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State’s FFY 2007 reported data for this indicator are 21.3% for reading and 16.8% for mathematics. The State reported that the data submitted in the FFY 2006 APR were calculated and reported incompletely. Because the State did not provide valid and reliable FFY 2006 data for this indicator, OSEP cannot determine whether there was progress or slippage.</p> <p>The State did not meet its FFY 2007 targets of 38%.</p> <p>OSEP’s June 17, 2008 FFY 2006 SPP/APR response table required the State to include in the FFY 2007 APR, FFY 2007 progress data in a manner consistent with the required measurement (i.e., a statewide percentage) and a copy of Table 6 for the correct reporting period. The State provided the required information.</p>	<p>OSEP looks forward to the State’s data demonstrating improvement in performance in the FFY 2008 APR, due February 1, 2010.</p>
4. Rates of suspension and	The State revised the improvement activities for this indicator and OSEP	The State did not submit FFY 2007 data for

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>expulsion:</p> <p>A. Percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year; and</p> <p>[Results Indicator]</p>	<p>accepts those revisions.</p> <p>The State did not report any data and stated that "valid and reliable data are not currently available for this indicator for FFY 2007."</p> <p>The State reported that its current definition of significant discrepancy is "suspension and expulsion of children with disabilities for greater than 10 days in a school year at a rate that is 5% or greater than [the] suspension rate for general education students in this category." The State further reported that it is considering redefining significant discrepancy as "the suspension and expulsion of any child with a disability for 10 or more cumulative days in a school year by an LEA with a qualifying subgroup at a rate that is higher than the equivalent rate for non-disabled peers." The State indicated that its definition, baseline data, and targets will be revised with stakeholder input prior to submission of the FFY 2008 APR.</p> <p>OSEP's June 17, 2008 FFY 2006 SPP/APR response table required the State to include in the FFY 2007 APR: (1) FFY 2005 data; (2) FFY 2006 progress data; (3) and a description of the review, and if appropriate, revision of policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure compliance with IDEA for any LEAs identified as having significant discrepancies in FFY 2005 and FFY 2006. The State reported in the FFY 2007 APR that it "has determined that valid and reliable FFY 2005 and FFY 2006 data do not exist for this indicator."</p> <p>The State did not provide any data for this indicator. Because the State provided no data for this indicator, OSEP could not determine whether there was progress or slippage or whether the State met its target.</p>	<p>this indicator. The State has not provided valid and reliable data for this indicator, although required, for four years. This raises concerns about the State's compliance with the requirements in 34 CFR §76.720(c).</p> <p>The State provided a plan to collect and report the required data beginning with the FFY 2008 APR. The State must provide the required data in the FFY 2008 APR, due February 1, 2010.</p> <p>As noted in the revised Part B Indicator Measurement Table, in reporting on this indicator in the FFY 2008 APR, due February 1, 2010, the State must describe the results of the State's examination of data from FFY 2007 (2007-2008).</p> <p>In addition, the State must describe the review, and if appropriate, revision of policies, procedures and practices relating to the development and implementation of the IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure compliance with the IDEA for LEAs identified with significant discrepancies based on the FFY 2007 data, as required by 34 CFR §300.170(b).</p>
<p>4. Rates of suspension and expulsion:</p> <p>B. Percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of greater than 10 days in a school year</p>	<p>States were not required to report on this indicator for FFY 2007.</p>	<p>The State is not required to report on this indicator in the FFY 2008 APR, due February 1, 2010.</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps																				
of children with disabilities by race and ethnicity. [Results Indicator]																						
5. Percent of children with IEPs aged 6 through 21: A. Removed from regular class less than 21% of the day; B. Removed from regular class greater than 60% of the day; or C. Served in public or private separate schools, residential placements, or homebound or hospital placements. [Results Indicator]	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State reported in the FFY 2007 APR that the data submitted in the FFY 2006 APR incorrectly included some children aged 3-5 and therefore, are inaccurate. The State recalculated its FFY 2006 data and the revised data are reflected in the table below.</p> <p>The State's reported data for this indicator are:</p> <table><tr><th></th><th>FFY 2006 Data</th><th>FFY 2007 Data</th><th>FFY 2007 Target</th><th>Progress</th></tr><tr><td>A. % Removed from regular class less than 21% of the day</td><td>14.4</td><td>17.34</td><td>12.5</td><td>2.94%</td></tr><tr><td>B. % Removed from regular class greater than 60% of the day</td><td>27.2</td><td>19.49</td><td>14.0</td><td>7.71%</td></tr><tr><td>C. % Served in public or private separate schools, residential placements, or homebound or hospital placements.</td><td>21.7</td><td>12.15</td><td>28.0</td><td>9.55%</td></tr></table> <p>These data represent progress from the FFY 2006 data.</p> <p>The State met its FFY 2007 targets for 5A and 5C and did not meet its target for 5B.</p>		FFY 2006 Data	FFY 2007 Data	FFY 2007 Target	Progress	A. % Removed from regular class less than 21% of the day	14.4	17.34	12.5	2.94%	B. % Removed from regular class greater than 60% of the day	27.2	19.49	14.0	7.71%	C. % Served in public or private separate schools, residential placements, or homebound or hospital placements.	21.7	12.15	28.0	9.55%	<p>OSEP appreciates the State's efforts to improve performance and looks forward to the State's data demonstrating improvement in performance in the FFY 2008 APR, due February 1, 2010.</p>
	FFY 2006 Data	FFY 2007 Data	FFY 2007 Target	Progress																		
A. % Removed from regular class less than 21% of the day	14.4	17.34	12.5	2.94%																		
B. % Removed from regular class greater than 60% of the day	27.2	19.49	14.0	7.71%																		
C. % Served in public or private separate schools, residential placements, or homebound or hospital placements.	21.7	12.15	28.0	9.55%																		
6. Percent of preschool children with IEPs who received special education and related services in settings with typically developing peers (i.e., early childhood settings,	States were not required to report on this indicator for FFY 2007.	The State is not required to report on this indicator in the FFY 2008 APR, due February 1, 2010.																				

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>home, and part-time early childhood/part-time early childhood special education settings).</p> <p>[Results Indicator]</p>		
<p>7. Percent of preschool children with IEPs who demonstrate improved:</p> <p>A. Positive social-emotional skills (including social relationships);</p> <p>B. Acquisition and use of knowledge and skills (including early language/ communication and early literacy); and</p> <p>C. Use of appropriate behaviors to meet their needs.</p> <p>[Results Indicator]</p>	<p>The State did not provide any data for this indicator.</p> <p>The State reported that entry data will be collected in FFY 2009 (SY 2009-2010).</p> <p>Because the State did not provide entry data in its FFY 2005 or FFY 2006 APR, OSEP's June 17, 2008 FFY 2006 SPP/APR response table required the State to provide entry data in the FFY 2007 APR. The State did not provide the required information.</p>	<p>The State did not report the required progress data. While States are required to provide baseline data and establish targets with the FFY 2008 APR, the State has not provided entry data and reports it will not begin collecting these data until FFY 2009. Therefore, the State will be unable to establish baseline data and targets as required in the FFY 2008 SPP/APR.</p> <p>The State must report entry data and improvement activities with the FFY 2008 APR, due February 1, 2010. The State must review its improvement activities and revise them, if appropriate, to ensure they will enable the State to provide the required information in the FFY 2008 APR.</p>
<p>8. Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities.</p> <p>[Results Indicator]</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State did not provide any data for this indicator. Because the State provided no data for this indicator, OSEP could not determine whether there was progress or slippage or whether the State met its target.</p>	<p>The State provided a plan to collect and report the required data beginning with the FFY 2008 APR. The State must provide the required data in the FFY 2008 APR, due February 1, 2010.</p>
<p>9. Percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State did not report the actual number of districts determined in FFY 2007 to have disproportionate representation of racial or ethnic groups in special education and related services that was the result of inappropriate</p>	<p>The State did not submit FFY 2007 data for this indicator. The State has not provided valid and reliable data for this indicator, although required, for three years. This raises concerns about the State's compliance with the requirements in 34</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>identification.</p> <p>[Compliance Indicator]</p>	<p>identification. The State reported that it "is unable to report on the number of districts in FFY 2007 that may have had disproportionate representation due to the lack of valid and reliable data that would allow the State to determine whether there was in fact disproportionate representation. Because this foundational information is unavailable, the [State] is unable to make any determinations related to potentially inappropriate identification practices."</p> <p>OSEP's June 17, 2008 FFY 2006 SPP/APR response table required the State to include in the FFY 2007 APR, FFY 2005 baseline data and FFY 2006 progress data that are consistent with the measurement. The State reported in the FFY 2007 APR that "reliable FFY 2005 and FFY 2006 data are unavailable" for this indicator.</p> <p>Because the State provided no data for this indicator, OSEP could not determine whether there was progress or slippage or whether the State met its target.</p> <p>OSEP's June 17, 2008 FFY 2006 SPP/APR response table required the State to clarify in the FFY 2007 APR, the State's criteria for determining what constitutes a "low number" of students of particular racial or ethnic groups that would result in the exclusion of a district's data from the analysis of the State's data for this indicator. The State provided the clarifying information as required.</p>	<p>CFR §76.720(c).</p> <p>The State provided a plan to collect and report the required data beginning with the FFY 2008 APR. The State must provide the required data in the FFY 2008 APR, due February 1, 2010.</p>
<p>10. Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification.</p> <p>[Compliance Indicator]</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State did not report the actual number of districts determined in FFY 2007 to have disproportionate representation of racial or ethnic groups in specific disability categories that was the result of inappropriate identification. The State did not provide any data for this indicator. The State referenced the challenges reported under Indicator 9 concerning the State's difficulties in providing valid and reliable data related to disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification.</p> <p>OSEP's June 17, 2008 FFY 2006 SPP/APR response table required the State to include in the FFY 2007 APR, FFY 2005 baseline data and FFY 2006 progress data that are consistent with the measurement. The State reported that "accurate and reliable FFY 2005 and FFY 2006 data for this indicator are</p>	<p>The State did not submit FFY 2007 data for this indicator. The State has not provided valid and reliable data for this indicator, although required, for three years. This raises concerns about the State's compliance with the requirements in 34 CFR §76.720(c).</p> <p>The State provided a plan to collect and report the required data beginning with the FFY 2008 APR. The State must provide the required data in the FFY 2008 APR, due February 1, 2010.</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>11. Percent of children with parental consent to evaluate, who were evaluated within 60 days (or State-established timeline). [Compliance Indicator]</p>	<p>not available.”</p> <p>Because the State provided no data for this indicator, OSEP could not determine whether there was progress or slippage or whether the State met its target.</p> <p>OSEP’s FFY 2006 SPP/APR response table required the State to clarify in the FFY 2007 APR, the State’s criteria for determining what constitutes a “low number” of students of particular racial or ethnic groups that would result in the exclusion of a district’s data from the analysis of the State’s data for this indicator. The State provided the clarifying information as required.</p> <p>The State’s FFY 2007 reported data for this indicator are 45.3%. These data represent progress from the FFY 2006 data of 42.08%.</p> <p>The State did not meet its FFY 2007 target of 100%.</p> <p>The State reported under Indicator 15, that four of the seven findings of noncompliance identified in FFY 2006 related to this indicator were corrected in a timely manner.</p> <p>OSEP’s FFY 2006 response table required the State to include in the FFY 2007 APR, data demonstrating the correction of findings of noncompliance identified in FFY 2005 related to this indicator. The State reported that it is unable to report on the correction of noncompliance identified in FFY 2005. The State reported that it “has been unable to retrieve these records, which were apparently misplaced during the transition of the SEA” and that “data for FFY 2005 is not available for review, reporting purposes, or to establish baseline measures.”</p>	<p>The State reported that noncompliance identified in FFY 2006 with the timely initial evaluation requirements in 34 CFR §300.301(c)(1) was partially corrected. The State must demonstrate, in the FFY 2008 APR, due February 1, 2010, that the remaining three uncorrected noncompliance findings were corrected.</p> <p>The State must demonstrate, in the FFY 2008 APR due February 1, 2010, that the noncompliance the State reported under this indicator in the FFY 2007 APR was corrected. The State must report that it has verified that each LEA with noncompliance reported by the State under this indicator in the FFY 2007 APR and each of the LEAs with remaining noncompliance identified in FFY 2006: (1) is correctly implementing the specific regulatory requirements; and (2) has completed the initial evaluation, although late, unless the child is no longer within the jurisdiction of the LEA, consistent with OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02).</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>12. Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays.</p> <p>[Compliance Indicator]</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2007 reported data for this indicator are 62%. These data represent progress from the FFY 2006 data of 40.62%.</p> <p>The State did not meet its FFY 2007 target of 100%.</p> <p>The State reported in the FFY 2007 APR that data concerning "correction to FFY 2006 findings of noncompliance is not available." The State further reported in Indicator 15, that none of the four findings of noncompliance identified in FFY 2006 related to this indicator were corrected in a timely manner.</p>	<p>The State must review its improvement activities and revise them, if appropriate, to ensure they will enable the State to provide data in future submissions to OSEP demonstrating that the State is in compliance with the requirements in 34 CFR §300.301(c). The State must provide in the FFY 2008 APR, due February 1, 2010, progress data, including reporting correction of the noncompliance as noted above.</p> <p>OSEP has imposed <u>Special Conditions</u> on the State's FFY 2008 IDEA Part B grant, due in part, to the State's longstanding noncompliance with the requirements in 34 CFR §300.301(c). The State submitted updated data in two <u>Special Conditions</u> Progress Reports on the percent of initial evaluations completed within the required timeline. OSEP's review of the State's updated data is addressed in the <u>Special Conditions</u> section of this table.</p> <p>The State reported that noncompliance identified in FFY 2006 with the early childhood transition requirements in 34 CFR §300.124(b) was not corrected. The State must demonstrate, in the FFY 2008 APR, due February 1, 2010, that the four uncorrected noncompliance findings were corrected.</p> <p>The State must demonstrate, in the FFY 2008 APR due February 1, 2010, that the State is in compliance with the early childhood transition requirements in 34 CFR §300.124(b), including correction of</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>13. Percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the postsecondary goals.</p> <p>[Compliance Indicator]</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2007 reported data for this indicator are 29.15%. These data represent slippage from the FFY 2006 data of 54%.</p> <p>The State did not meet its FFY 2007 target of 100%.</p> <p>The State reported in Indicator 15, that one of the seven findings of noncompliance identified in FFY 2006 related to this indicator was corrected in a timely manner.</p> <p>OSEP's June 17, 2008 FFY 2006 SPP/APR response table required the State to include in the FFY 2007 APR, data demonstrating correction of noncompliance identified in FFY 2005 related to this indicator. The State reported that "valid and reliable data demonstrating correction of noncompliance identified in FFY 2005 related to this indicator are unavailable."</p>	<p>the noncompliance the State reported under this indicator in the FFY 2007 APR.</p> <p>The State must report, in its FFY 2008 APR due February 1, 2010, that it has verified that each LEA with noncompliance reported by the State under this indicator in the FFY 2007 APR and each of the LEAs with noncompliance identified in FFY 2006: (1) is correctly implementing the specific regulatory requirements; and (2) has developed and implemented the IEP, although late, unless the child is no longer within the jurisdiction of the LEA, consistent with OSEP Memo 09-02.</p> <p>If the State is unable to demonstrate compliance in the FFY 2008 APR, the State must review its improvement activities and revise them, if necessary to ensure compliance.</p> <p>The State reported that noncompliance identified in FFY 2006 with the secondary transition requirements in 34 CFR §300.320(b) was partially corrected. The State must demonstrate, in the FFY 2008 APR, due February 1, 2010, that the six remaining uncorrected noncompliance findings were corrected.</p> <p>Although the State is not required to report data for this indicator in the FFY 2008 APR, the State must report on the timely correction of the noncompliance reported by the State under this indicator in the FFY 2007 APR.</p> <p>The State must report, in its FFY 2008</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>14. Percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of postsecondary school, or both, within one year of leaving high school.</p> <p>[Results Indicator]</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2007 reported data for this indicator are 76%. The State reported that accurate FFY 2006 baseline data are not available and indicated that the State intends "in consultation with stakeholders" to revise the SPP "to include FFY 2007 data as new baseline and amend annual progress targets accordingly." Therefore, OSEP could not determine whether there was progress or slippage.</p> <p>The State met its FFY 2007 target of 60%.</p> <p>OSEP's June 17, 2008 FFY 2006 SPP/APR response table required the State to include FFY 2006 baseline data and its definitions of competitive employment and postsecondary school. The State provided the definitions, but as noted above, did not provide FFY 2006 baseline data.</p>	<p>The State is not required to report on this indicator in the FFY 2008 APR, due February 1, 2010.</p>
<p>15. General supervision system (including monitoring, complaints, hearings, etc.) identifies and corrects noncompliance as soon as possible but in no case later than one year from identification.</p> <p>[Compliance Indicator]</p>	<p>The State reported FFY 2007 data of 15.12% and 16.04% for this indicator. OSEP used the actual numbers reported in the Indicator 15 Worksheet and included in the State's explanation of the Worksheet and recalculated the State's data to be 15.12%. These data represent progress from the FFY 2006 data of 0%.</p> <p>The State did not meet its FFY 2007 target of 100%.</p> <p>The State reported that 13 of 86 findings of noncompliance identified in FFY 2006 were corrected in a timely manner. The State further reported that 57</p>	<p>The State reported that 70 of 86 findings of noncompliance identified in FFY 2006 were corrected. The State further reported that seven findings of noncompliance were not corrected but did not account for the other nine findings of noncompliance.</p> <p>The State did not provide consistent information related to the status of findings</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
	<p>findings of noncompliance were corrected and verified but not within one year of identification. The State reported that seven findings have not been corrected and stated that the "Office of Quality Assurance and Monitoring will follow up with the two LEAs (one has three unresolved findings and the other has four unresolved findings) to provide the appropriate enforcement activities as detailed in its new monitoring process." The State did not report on the status of correction of the other nine remaining findings of noncompliance that were included on the Indicator 15 Worksheet.</p> <p>OSEP's June 17, 2008 SPP/APR response table required the State to clarify that its FFY 2007 data on the timely correction of findings of noncompliance identified in FFY 2006 include findings of noncompliance that were identified through dispute resolution (i.e., State complaints and due process hearings). The State reported that the Indicator 15 Worksheet "includes findings from monitoring activities and dispute resolution procedures (i.e., complaints and hearings)" and the Indicator 15 Worksheet reflects nine findings of noncompliance that were identified through the State's dispute resolution system. However, the State also reported within the "Overview of Issue/Description of Process" for this indicator that the State is unable to include in its FFY 2007 APR, the number of findings made through due process hearings. The State indicated that findings made through due process hearings in FFY's 2007 and 2008 will be reported in the State's FFY 2008 APR submission but did not specify whether findings made through State complaints will be reported in the FFY 2008 APR submission. Therefore, it is unclear to OSEP the extent to which the State reported the number of findings of noncompliance identified through the State's dispute resolution processes (i.e., State complaints and due process hearings) when reporting FFY 2007 data for this indicator.</p> <p>OSEP's June 17, 2008 SPP/APR response table and FFY 2008 <u>Special Conditions</u> imposed on the State's IDEA Part B grant award required the State to clarify the number of findings identified in FFY 2005 and demonstrate that the State has corrected the noncompliance identified in FFY 2005, including the 31 findings of noncompliance identified in FFY 2005 through State complaints. The State reported in the FFY 2007 APR that there were seven findings of noncompliance identified in FFY 2005 and described the steps the State would take to ensure correction of the noncompliance as well as actions taken by the LEA to improve compliance. However, on page 15 of the State's</p>	<p>of noncompliance identified in FFY 2005. As a result, OSEP was unable to determine the extent to which the State has ensured correction of those findings. Under the FFY 2008 <u>Special Conditions</u>, the State is required to provide updated data on the FFY 2005 findings of noncompliance and the status of correction in the final progress report. OSEP will respond to the State's submission of that information with the State's FFY 2009 IDEA Part B grant award. Any further action required concerning the FFY 2005 findings of noncompliance will be addressed in OSEP's response to the State.</p> <p>The State must demonstrate in the FFY 2008 APR, due February 1, 2010, that the State has corrected the remaining 16 findings of noncompliance identified in FFY 2006 that the State reported in the FFY 2007 APR were not corrected. The State must also clarify that its FFY 2008 progress data on the timely correction of findings of noncompliance identified in FFY 2007 includes all findings of noncompliance that were identified through dispute resolution (i.e., State complaints and due process hearings).</p> <p>The State must review its improvement activities and revise them, if appropriate, to ensure they will enable the State to provide data in the FFY 2008 APR, due February 1, 2010, demonstrating that the State timely corrected noncompliance identified by the State in FFY 2007 in accordance with 20 U.S.C. 1232d(b)(3)(E) and 34 CFR</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
	<p>January 2009 <u>Special Conditions Progress Report</u>, the State reported that in “FFY 2005, there were a total of 34 findings of noncompliance,” with 15 findings corrected and 19 uncorrected.” In the FFY 2007 APR, the State clarified that three findings were made in FFY 2006 (the Elementary Schools Division) that had been erroneously reported as FFY 2005 findings. The State did not acknowledge or explain the discrepancy between the total number of FFY 2005 findings reported in the FFY 2007 APR (7) and the January 2009 <u>Special Conditions Progress Report</u> (31, excluding the three findings identified in the Elementary Schools Division).</p> <p>Because the State provided inconsistent information in the <u>Special Conditions Progress Report</u> and the FFY 2007 APR concerning the number of findings made in FFY 2005 and the status of correction of those findings, OSEP could not determine the extent to which the State ensured the correction of findings of noncompliance identified in FFY 2005.</p> <p>The State reported that it has been unable to locate documentation of the written complaints and any follow up actions taken to correct the 31 findings of noncompliance identified in FFY 2005 through State complaint investigations. The State further reported that “the lack of written complaint reports prohibits the State from reconciling these cases.” The FFY 2007 APR states that “[t]o ensure that effective general supervision practices in managing state complaints are implemented in the future, the State Complaint Office will develop a systematic process that identifies findings, correction of all noncompliance identified through complaint investigations, provides verification of correction no later than one year, and utilizes strategies that keep the Quality Assurance and Monitoring Unit informed of all activity.”</p> <p>OSEP’s June 17, 2008 SPP/APR response table required that the State clarify in the FFY 2007 APR, that the State ensures the correction of any noncompliance, notwithstanding the extent of the noncompliance. The State provided the required information and stated that the “redesign of its monitoring process incorporates a systems approach to identification and correction of all noncompliance.”</p> <p>The FFY 2008 <u>Special Conditions</u> require that the State provide as part of its response to Indicator 15, a revised description of the State’s system of general supervision, including an overview of the State’s process for selecting LEAs for monitoring. The State provided an updated description of the components</p>	<p>§§300.149 and 300.600(e) and OSEP Memo 09-02.</p> <p>In reporting on the correction of noncompliance, the State must report that it has: (1) corrected all instances of noncompliance (including noncompliance identified through the State’s monitoring system, through the State’s data system and by the Department); and (2) verified that each LEA with identified noncompliance is correctly implementing the specific regulatory requirements, consistent with OSEP Memo 09-02.</p> <p>In addition, in responding to Indicators 11, 12, and 13 in the FFY 2008 APR, due February 1, 2010, the State must report on correction of the noncompliance described in this table under those indicators.</p> <p>In reporting on Indicator 15 in the FFY 2008 APR, the State must use the Indicator 15 Worksheet.</p> <p>OSEP has imposed <u>Special Conditions</u> on the State’s FFY 2008 IDEA Part B grant, due in part, to the State’s longstanding noncompliance with the requirements to identify and correct noncompliance (20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600(e)). The State submitted updated information in two <u>Special Conditions Progress Reports</u> concerning the State’s system of general supervision. OSEP’s review of the State’s updated information is addressed in this indicator.</p> <p>The State must provide the final Progress</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
	<p>of the State's system of general supervision in the FFY 2007 APR as required. In its January 2009 <u>Special Conditions Progress Report</u>, the State provided additional information about the restructured system of monitoring its LEAs and reported that the monitoring process will be fully implemented in February 2009.</p> <p>Under the Special Conditions, the State was required to revise the SPP to reflect the State's newly restructured general supervision system that includes the integrated monitoring process and tiered approach to monitoring intervention described in the State's FFY 2007 <u>Special Conditions Progress Report</u>, dated June 2, 2008. The SPP posted on the State's website has not been revised to reflect the revisions to the State's system of general supervision.</p> <p>The State reported it has accessed technical assistance from the Data Accountability Center as required under the FFY 2008 <u>Special Conditions</u> and has also received assistance from the Mid-South Regional Resource Center. The State provided a summary of the training and technical assistance services it has accessed to improve the State's level of compliance with the requirements of this indicator.</p> <p>The FFY 2008 <u>Special Conditions</u> require that the State provide OSEP with copies of any monitoring reports issued since February 1, 2008. The State reported that it has not issued any monitoring reports since February 1, 2008.</p>	<p>Report required under the FFY 2008 <u>Special Conditions</u>. OSEP will respond to that submission with the State's FFY 2009 IDEA Part B grant award.</p> <p>OSEP reminds the State it must ensure that the SPP, as posted on its website, is revised to reflect the revisions to the State's system of general supervision.</p>
<p>16. Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint. [Compliance Indicator]</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2007 reported data for this indicator are 0%. These data are based on five signed written complaints. These data represent slippage from the FFY 2006 data of 100%.</p> <p>The State did not meet its FFY 2007 target of 100%.</p>	<p>The State must review its improvement activities and revise them, if appropriate, to ensure they will enable the State to provide data in the FFY 2008 APR, due February 1, 2010, demonstrating that the State is in compliance with the timely complaint resolution requirements in 34 CFR §300.152.</p>
<p>17. Percent of fully adjudicated due process hearing requests that were fully adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing</p>	<p>The State revised the improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2007 data under section 618 of IDEA for this indicator are 174 of 1,319 due process hearings were fully adjudicated within the required</p>	<p>The State did not submit FFY 2007 data for this indicator. The State provided a plan to collect and report the required data beginning with the FFY 2008 APR. The State must provide the required data in the</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>officer at the request of either party. [Compliance Indicator]</p>	<p>timeline (13.19%). However, the State did not provide FFY 2007 data for this indicator in the FFY 2007 APR. The State reported that "[a]fter examination of the data that was compiled in preparation for this report, it was determined that the methods used prior to the August 11, 2008 implementation of the SHO [Student Hearing Office] Docketing System [i.e., a combination of Microsoft Access and a "Quickbase" Database] were inadequately maintained and thus yielded unreliable data." Therefore, these data are not valid and reliable.</p> <p>The State reported it is unable to provide the FFY 2006 progress data as required by OSEP's June 17, 2008 FFY 2006 SPP/APR response table. Because the State did not provide valid and reliable FFY 2006 and FFY 2007 data for this indicator, OSEP could not determine whether there was progress or slippage or whether the State met its target.</p>	<p>FFY 2008 APR, due February 1, 2010.</p> <p>The State must review its improvement activities and revise them, if appropriate, to ensure they will enable the State to provide data in the FFY 2008 APR, due February 1, 2010, demonstrating that the State is in compliance with the due process hearing timeline requirements in 34 CFR §300.515.</p>
<p>18. Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements. [Results Indicator]</p>	<p>The State's reported FFY 2007 data under section 618 of IDEA are 153 resolution meetings were held and none resulted in a settlement agreement. However, the State did not provide FFY 2007 data for this indicator in the FFY 2007 APR. The State reported that DCPS, "in conjunction with commitments in the Blackman Jones case, provided a blanket waiver of all resolution sessions until such time as it could ensure that resolution sessions could be timely held and staffed with knowledgeable individuals with authority to resolve complainants." The State further reported that data on resolution sessions conducted by charter LEAs in the State are not available. Because the State did not provide FFY 2007 data for this indicator, OSEP could not determine whether there was progress or slippage or whether the State met its target.</p>	<p>The State did not submit FFY 2007 data for this indicator. The State provided a plan to collect and report the required data beginning with the FFY 2008 APR. The State must provide the required data in the FFY 2008 APR, due February 1, 2010.</p>
<p>19. Percent of mediations held that resulted in mediation agreements. [Results Indicator]</p>	<p>The State revised its improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2007 reported data are 17%. However, OSEP recalculated the data for this indicator to be 18.18%. These data represent progress from the State's FFY 2007 data of 16.6%.</p> <p>The State did not meet its FFY 2007 target of 23%.</p>	<p>OSEP looks forward to the State's data demonstrating improvement in performance in the FFY 2008 APR, due February 1, 2010.</p>
<p>20. State reported data (618 and</p>	<p>The State revised the improvement activities for this indicator and OSEP</p>	<p>The State must review its improvement</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
State Performance Plan and Annual Performance Report) are timely and accurate. [Compliance Indicator]	accepts those revisions. The State's FFY 2007 reported data for this indicator are 67.1%. However, OSEP's calculation of the data for this indicator is 64.6%. These data represent slippage from the FFY 2006 data of 81.1%. The State did not meet its FFY 2007 target of 100%.	activities and revise them, if appropriate, to ensure they will enable the State to provide data in the FFY 2008 APR, due February 1, 2010, demonstrating that the State is in compliance with the timely and accurate data reporting requirements in IDEA sections 616, 618, and 642 and 34 CFR §§76.720 and 300.601(b). In reporting on Indicator 20 in the FFY 2008 APR, the State must use the Indicator 20 Data Rubric.

Special Conditions:

Pursuant to 34 CFR §80.12, OSEP imposed Special Conditions on the State's FFY 2008 grant award under Part B of the IDEA (FFY 2008 Special Conditions), related to the State's noncompliance with the requirements to:

- Provide timely initial evaluations and reevaluations (sections 614(a)(1), (b) and (c) and 614(a)(2), (b) and (c) of IDEA and 34 CFR §§300.301(c)(1) and 300.303);
- Implement due process hearing decisions in a timely manner (section 615(f) and (i));
- Ensure placement in the least restrictive environment (section 612(a)(5)(A) and 34 CFR §§300.114 through 300.120); and
- Identify and correct noncompliance with the requirements of Part B of the IDEA (20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600).

The noncompliance related to each FFY 2008 Special Condition is addressed below. The State was required to submit the first FFY 2008 Special Conditions Progress Report on October 15, 2008 with a second report due on January 15, 2009. The Special Conditions also require the State to report certain information in the State's response to Indicator 15 in the FFY 2007 APR.

Note: These issues were initially identified in the 1998-2001 Compliance Agreement between the State and the Department. All, with the exception of the identification and correction of noncompliance, have been Special Conditions on each grant award from 2001 to present. The Special Condition related to identification and correction of noncompliance was first imposed on the State's FFY 2005 grant award and has continued on each IDEA, Part B grant award since that time.

<u>Provide timely initial evaluations and reevaluations:</u>	<u>Initial Evaluations</u>	The State's data demonstrate continued noncompliance with the requirements in 20 U.S.C. 1414(a), (b) and (c) and 34 CFR
An initial evaluation that meets the	For the first FFY 2008 <u>Special Conditions</u> reporting period (May 16, 2008 through September 16, 2008), the State reported that 470 initial evaluations	

District of Columbia Part B FFY 2007 SPP/APR Response Table

requirements of section 20 U.S.C. 614(a)(1), (b) and (c) of Part B of IDEA and 34 CFR §300.301(c)(1) must be completed for all children with disabilities, and an appropriate placement must be made within the maximum number of days established by the State's policy.

At the end of the final reporting period for FFY 2007, 320 initial evaluations and placements had not been completed within the required timeline at the conclusion of the reporting period with an average number of overdue days of 63. The State reported that 30.27% of initial evaluations and placements were provided within the required timeline to children with disabilities whose initial evaluation deadlines fell within the final FFY 2007 reporting period.

A **reevaluation** that meets the requirements of 20 U.S.C. 614(a)(2), (b) and (c) of Part B of IDEA and 34 CFR §300.303 must be completed for all children with disabilities no later than three years after the date on which the previous evaluation or reevaluation was completed, unless the parent and the LEA agree that a reevaluation is unnecessary.

At the end of the final reporting period for FFY 2007, 1,691 reevaluations had not been conducted in a timely manner at the conclusion of the reporting period with an average number of overdue days of

and placements had not been completed within the required timeline at the conclusion of the reporting period with an average number of overdue days of 153. The State reported that the percent of timely initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period was 14.34%.

For the second FFY 2008 Special Conditions reporting period (September 17, 2008 through December 17, 2008), the State reported that 495 initial evaluations and placements had not been completed within the required timeline at the conclusion of the reporting period with an average number of overdue days of 50.1. The State reported that the percent of timely initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period was 32.0%. These data reflect progress in that the percent of timely initial evaluations completed increased from 14.34% to 32.0% and the average number of overdue days decreased from 153 to 50.1 from the first FFY 2008 reporting period. However, the number of children who had not been provided a timely initial evaluation at the conclusion of the reporting period increased by 25 children.

The table below includes data reported by the State under this Special Condition since FFY 2006.

Initial Evaluations and Placements						
	FFY 2006	FFY 2006	FFY 2007	FFY 2007	FFY 2008	FFY 2008
	02/2007	06/2007	02/2008	06/2008	10/2008	01/2009
Percent Completed Timely	47%	43%	42.7%	30.27%	14.34%	32.0%
Average Number of Overdue Days	112	53	69.79	63	153	50.1

Reevaluations

For the first FFY 2008 Special Conditions reporting period (May 16, 2008

§§300.301(c)(1) and 300.303. The State must provide the final Progress Report required under the FFY 2008 Special Conditions. OSEP will respond to that submission with the State's FFY 2009 IDEA Part B grant award.

District of Columbia Part B FFY 2007 SPP/APR Response Table

75. The State reported that 23.17% of reevaluations were conducted in a timely manner for children with disabilities whose reevaluation deadlines fell within the final FFY 2007 reporting period.

through September 16, 2008), the State reported that 1,640 children had not been provided a timely reevaluation at the conclusion of the reporting period, with an average number of overdue days of 31. The State reported that the percent of timely reevaluations provided to children whose reevaluation deadlines fell within the reporting period was 13.1%.

For the second FFY 2008 Special Conditions reporting period (September 17, 2008 through December 17, 2008), the State reported that 1,902 children had not been provided a timely reevaluation at the conclusion of the reporting period, with an average number of overdue days of 40.6. The State reported that the percent of timely reevaluations provided to children whose reevaluation deadlines fell within the reporting period was 26.0%. These data demonstrate progress in part, in that the percent of children with timely reevaluations increased from 13.1 to 26.0%. However, the average number of overdue days increased by 9.6 days and the total number of children that had not been provided a timely reevaluation at the conclusion of the reporting period increased by 262 children.

The table below includes data reported by the State under this Special Condition since FFY 2006.

Reevaluations						
	FFY 2006	FFY 2006	FFY 2007	FFY 2007	FFY 2008	FFY 2008
	02/2007	06/2007	02/2008	06/2008	10/2008	01/2009
Percent Completed Timely	54%	41%	37.2%	23.17%	13.1%	26.0%
Average Number of Overdue Days	115	67	199.22	75	31	40.6

Under the FFY 2008 Special Conditions, the State was required to provide updated information related to the State's process for collecting and reporting data on timely initial evaluations and placements and/or reevaluations through

District of Columbia Part B FFY 2007 SPP/APR Response Table

	<p>the State's Special Education Data System (SEDS).</p> <p>In each of the progress reports, the State was also required to describe the strategies it is implementing to reduce the number of overdue initial evaluations and placements and reevaluations, and if there is no progress in reducing the number of overdue initial evaluations and placements and reevaluations, the State must provide an explanation for the lack of progress and reevaluate the procedures it is implementing to reduce the number of overdue initial evaluations and placements and/or reevaluations.</p> <p>The State provided updated information on development and implementation of SEDS and identified strategies that are being used to reduce the number of untimely initial evaluations and placements and reevaluations as required.</p>	
<p><u>Implement due process hearing decisions in a timely manner:</u></p> <p>Impartial hearing officer decisions must be implemented within the timeframe prescribed by the hearing officer, or, if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State, as required by section 615(f) and (i) of Part B of the IDEA.</p> <p>At the end of the final reporting period for FFY 2007, 1,263 hearing decisions had not been implemented in a timely manner. The State reported that 16.1% of hearing officer determinations were implemented in a timely manner during the final FFY 2007 reporting period.</p>	<p>For the first FFY 2008 <u>Special Conditions</u> reporting period (May 16, 2008 through September 16, 2008), the State reported that hearing officer determinations for 826 children had not been implemented in a timely manner at the conclusion of the reporting period. The State reported that the percent of hearing officer determinations that had been implemented in a timely manner during the reporting period was 24.04%.</p> <p>For the second FFY 2008 <u>Special Conditions</u> reporting period (September 17, 2008 through December 17, 2008), the State reported that hearing officer determinations for 592 children had not been implemented in a timely manner at the conclusion of the reporting period. The State reported that the percent of hearing officer determinations that had been implemented in a timely manner during the reporting period was 20.93%.</p> <p>There is a discrepancy in the State's report of the number of children whose hearing officer determinations were not implemented timely as of the end of the September 16, 2008 reporting period. In the January 2009 report, the State reported that 754 children had not had hearing officer determinations implemented within the timeframe established by the hearing officer or by the State at the conclusion of the previous reporting period (September 16, 2008). However, in the October 2008 progress report, the State reported that at the conclusion of the September 16, 2008 reporting period, 826 children had not had their hearing officer determinations implemented in a timely manner. The State did not account for the difference (72 fewer children) reported in the January 2009 report than in the October 2008 report.</p> <p>Under the FFY 2008 <u>Special Conditions</u>, the State was required to include in each progress report, updated information related to the State's process for</p>	<p>The State's data demonstrate continued noncompliance with the requirements in section 615(f) and (i) of Part B of the IDEA.</p> <p>The State must provide the final Progress Report required under the FFY 2008 <u>Special Conditions</u>. OSEP will respond to that submission with the State's FFY 2009 IDEA Part B grant award.</p>

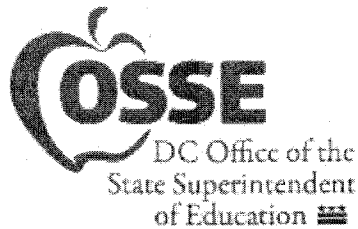
District of Columbia Part B FFY 2007 SPP/APR Response Table

	<p>collecting and reporting data on timely implementation of hearing officer determinations through the Blackman-Jones database and SEDS. The State was also required to describe the strategies it is implementing to reduce the number of children whose hearing officer determinations are not implemented in a timely manner, and address any remaining barriers to the timely implementation of hearing officer decisions and the steps being taken to remove those barriers. The State provided the information required in each of the progress reports.</p> <p>The State provided information on pages 5-7 of the January 2009 <u>Special Conditions Progress Report</u> that indicates that the State's data for this <u>Special Condition</u> has not included implementation of hearing officer determinations by charter school LEAs. The State described the strategies being implemented to clarify charter LEAs' responsibilities for implementing hearing officer determinations and indicated it would require charter LEAs to report monthly to the State on the status of all unimplemented determinations and the steps being taken to ensure timely implementation of hearing officer determinations.</p>	
<p><u>Ensure placement in the least restrictive environment:</u></p> <p>All children with disabilities must be placed in the least restrictive environment appropriate to their individual needs, as required by section 612(a)(5)(A) of the IDEA and 34 CFR §§300.114 through 300.120.</p> <p>Section 616(a)(3) of the IDEA and 34 CFR §300.600(d) require the Department to monitor States and require each State to monitor the LEAs located in the State to adequately measure performance in certain priority areas, including the provision of a free appropriate public education in the least restrictive environment. In addition, the regulations at 34 CFR §§300.119 and</p>	<p>The FFY 2008 <u>Special Conditions</u> require the State to clarify how the State is meeting its responsibilities under 34 CFR §§300.119, 300.120, and 300.600 to ensure each public agency complies with the least restrictive environment (LRE) requirements at 34 CFR §300.114. This includes a description of the activities undertaken to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the requirements of 34 CFR §300.114 and any technical assistance and training activities carried out by the State to assist public agencies in this effort, as required by 34 CFR §300.119.</p> <p>The State provided the required information in the October 2008 progress report and reported updated information in the January 2009 progress report on the State's efforts to ensure LEA compliance with the LRE requirements under IDEA. The State notified OSEP in the January 2009 progress report and on page 36 of the FFY 2007 APR that the State has proposed a new policy that is "designed to communicate clear expectations regarding the obligation of all LEAs to meet LRE obligations." The State reported that State-level staff is available to provide technical assistance to IEP teams to identify supports and services necessary to enable students to be educated in the LRE. With regard to the proposed new policy, the State reported it is "in receipt of clarifying information from OSEP regarding public notice and</p>	<p>The State must provide the final Progress Report required under the FFY 2008 <u>Special Conditions</u>. OSEP will respond to that submission with the State's FFY 2009 IDEA Part B grant award.</p>

District of Columbia Part B FFY 2007 SPP/APR Response Table

<p>300.120 require States to carry out technical assistance, training, and monitoring activities to ensure each public agency implements the least restrictive environment requirements at 34 CFR §300.114. Further, if there is evidence that a public agency makes educational placements that are inconsistent with the least restrictive environment requirements at 34 CFR §300.114, the State must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.</p>	<p>hearing requirements related to state policy issuance and is undertaking reviews to ensure that the State is in compliance.”</p> <p>In its October 2008 progress report, the State clarified it is not using the “<i>MDT Notes Guidelines</i>” and “<i>MDT Checklist</i>” documents to support the State’s efforts to ensure compliance with 34 CFR §300.114 as previously reported to OSEP. The State reported on specific training, dates, and in some cases, presenters for professional development activities carried out to assist LEAs in complying with the LRE requirements.</p> <p>The State was required to provide OSEP with copies of any monitoring reports issued since February 1, 2008 that include findings as to whether educational placement decisions were made consistent with the LRE provisions of the IDEA. The State reported that it has not issued any monitoring reports since February 1, 2008.</p>	
<p><u>Identify and correct noncompliance:</u></p> <p>The State must identify noncompliance with the requirements of Part B of the IDEA and correct identified deficiencies in a timely manner in accordance with section 612(a)(1) of the IDEA, 34 CFR §300.149, and 20 U.S.C. 1232d(b)(3). The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 CFR §§300.600 through 300.602 and 300.606 through 300.608.</p>	<p>See Indicator 15.</p>	<p>See Indicator 15.</p>

MOA EXHIBIT 2



Andrew J. Pepin
Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Ave., SW
Room 5106, Potomac Center Plaza
Washington, DC 20202-2600

***RE: June 1, 2009 Determination Letter for the District of Columbia:
Show Cause and Request for a Hearing and Reconsideration of the Decision to
Suspend Funds Pending a Hearing***

Dear Mr. Pepin:

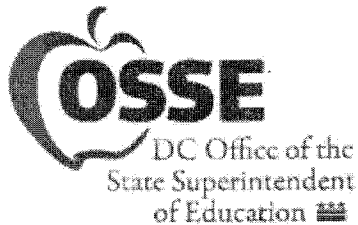
This letter responds to the June 1, 2009 determination letter from Patricia J. Guard, Acting Director of the Office of Special Education Programs, notifying the District of Columbia that the Department intends to withhold 20 percent of D.C.'s FFY 2009 funds reserved for state-level activities under section 611(e) of the Individuals with Disabilities Education Act (IDEA).

On behalf of the District of Columbia, the Office of the State Superintendent of Education (OSSE) hereby respectfully (1) requests, consistent with IDEA section 616(e)(4)(A) and 34 C.F.R. §300.605(a), a hearing to appeal the Department's decision to withhold FFY 2009 state-level funds and also (2) shows cause, consistent with 34 C.F.R. §300.605(b), why the Department should not suspend payment of those funds pending the outcome of the hearing.

Suspending and eventually withholding these funds would significantly impede the very activities critical to District compliance with IDEA and materially hinder reform efforts that currently are improving educational results for children with disabilities in the District. Our arguments are two-fold:

- It is not a reasonable and fair exercise of discretion to withhold funds based on a snapshot of the past when the present-day facts and circumstances are materially different; and
- The suspension and withholding of these funds will do real harm to improving educational outcomes for vulnerable children in a setting where state-level activities are making concrete headway.

We welcome you to hold OSSE accountable for our results, and do not contest the need for intervention, as implicitly recognized in the initiatives that we have already undertaken to correct deficiencies in special education programs of the District of Columbia. However, we strongly contest the proposed intervention of withholding funds from OSSE. OSSE is a new state agency, with new leadership that has made a significant commitment to the reform of special education protections and services. With due respect, it makes no sense and is unfair and counter-



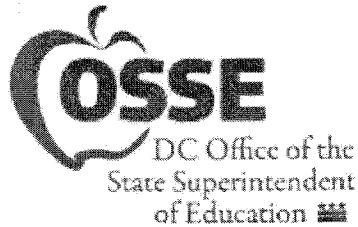
productive to withhold funds that we need to implement this effort based on the fact that a prior compliance agreement with a different state agency from 10 years ago did not result in compliance. We respectfully submit that it is essential to take into consideration the agency's efforts to reform special education; our progress as a new agency in addressing many of the specific problems that are the basis for your findings; our efforts to be honest about and address inadequacies in the accuracy and reliability of old data, the impact of such a withholding on students and the programs that serve them, the significant change in leadership since the District entered into the 1998 compliance agreement over a decade ago, and the level of effort required to implement real, systematic reform. Such reform is particularly challenging in a jurisdiction whose annual number of due process complaints exceeds the sum of all other jurisdictions, where more than 12% of students are in private placements and whose special education system has been under court oversight in multiple class actions for decades.

As you know, the District is a unique jurisdiction and the state of its special education system has no parallel. In addition to being a high-risk grantee with special conditions imposed on its federal education grants, the District is also accountable to a federal court consent decree in *Blackman Jones* for failure to serve children with disabilities under IDEA. Reform of a system such as this does not happen overnight and requires the sustained and coordinated support and resources from federal and local agencies, as well as input and buy-in from community stakeholders, if it is to last.

This administration has not taken a band-aid approach. Rather, the District has chosen to leverage the federal agency and federal court oversight and accountability to implement sustainable, systematic reforms. On the surface, this takes longer but results in better educational results for children with disabilities. Each time the SEA is confronted with a particular policy issue or compliance failure, the OSSE must identify and diagnose the problem; explore potential options; apply resources, including internal experts and technical assistance, to fashion a solution that will work in the District's peculiar circumstances; and seek community input and buy-in before actually implementing the solution.

As this letter will show, withholding funds at this critical period would undercut the role that a strong SEA can play in reforming special education in the District. As a practical matter, the OSSE cannot hire or employ staff if designated funds are not available due to the legal constraints of the District's Anti-Deficiency Act. Suspension or withholding of state-level activity funds, even if restored sometime later in the year, would mean the loss of approximately 7 experienced and knowledgeable staff – the very staff who would be working on improving special education programs within the District.

It is appropriate to consider current results and circumstances that have changed since the Annual Performance Report (APR) results on which the Department based its decision to suspend and withhold funds. One of the critical first steps to bringing the District into IDEA



compliance was the creation of the OSSE as a stand-alone SEA on October 1, 2007.¹ The Department noted the effect in last year's June 16, 2008 determination regarding special conditions on all federal grants, "...the DC OSSE takes very seriously its responsibility to address long-term deficiencies identified by the Department and other sources related to Federal program administration. The steps that DC OSSE has already taken ...demonstrate progress toward addressing the deficiencies and exemplify DC OSSE's commitment to resolving these issues." This commitment has not waived and is substantiated by continued measurable progress in the attainment of compliance.

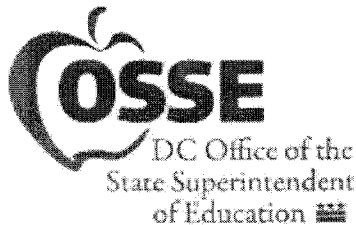
The OSSE does not contest the Department's determination for the FFY 2007 APR that the District of Columbia continues to need intervention in meeting the requirements of Part B of the IDEA consistent with the determinations in FFY 2005 and FFY 2006. Those results, however, should be evaluated and considered through the lens of the significant governance changes that have since occurred. FFY 2008 is the first year the OSSE had authority over the state special education functions in the District of Columbia. The 2007 APR reflects the best and most accurate assessment of circumstances that pre-dated current leadership at the OSSE and – more importantly – are being diagnosed and remedied by new leadership.

If improved educational results and functional outcomes for children with disabilities is the ultimate goal of the state's role in fostering IDEA compliance (*see* 34 CFR 300.600(b)), the SEA must be given credit for making the commitment and taking the time to accurately assess the circumstances it has inherited so that sustainable solutions are developed. Further, while it would be easier to mask problems related to data integrity, the leadership at the OSSE has instead chosen to be transparent in its efforts to identify current data challenges and build a more solid foundation against which to measure future progress. The leadership has taken this step because without accurate data, any solution is a mere guess- identifying the root cause remains an impossibility and reform efforts cannot be authentic.

Depriving the SEA of resources at this critical juncture will harm the federal interest in improving educational outcomes for children with disabilities. The District is producing improved results at the fastest possible pace while being mindful of the extensive and productive public participation requirements of the IDEA. Those requirements exist for a reason – real reform requires stakeholder input. Each step of sustainable reform is as lengthy as is required to correct and supplant entrenched systems that resulted in noncompliance. In essence, this decision penalizes the very teams that have produced concrete results in the District over the past year and a half for the behavior and lack of accountability of others in the past.

We believe the following facts reflect concrete steps toward improving compliance with IDEA in a sustainable manner in the District and should be considered by the Department in its discretion

¹ The Public Education Reform Amendment Act of 2007, effective June 12, 2007, (DC Law 17-9) created the OSSE as a new state education agency and all state-level education responsibilities transferred to the OSSE on October 1, 2007.

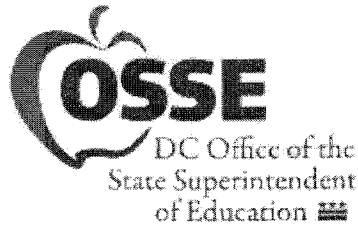


as to what enforcement action to take under 34 CFR 300.604(b). Each of these examples illustrates the critical importance and real results obtained from IDEA funds allocated for state-level activities.

Disproportionate identification of minority students (Indicators 9 and 10): The Department's determination rests in part on the fact that the District could not provide accurate and reliable data on disproportionate representation of minorities for FFY 2005 - 2007. The District takes the issue of disproportionate representation very seriously. The majority of our public school population consists of members of minority groups, located exclusively in an urban center. In some cases, individual LEA populations consist entirely of a single race/ethnicity. Given this fact, traditional definitions of disproportionate representation are not meaningful. The District made a commitment early on to rethink its approach in the face of inaccurate and incomplete data and unworkable past policy decisions. After diagnosing the problem, the OSSE sought and received extensive technical assistance leading to the agency's realization that the current definition of disproportionality is not appropriate nor sufficiently flexible to allow the SEA to genuinely determine whether an LEA is disproportionately identifying students. The unusual demographic qualities of LEAs in the District (which vary widely in size as well as racial make-up) require a new definition. Based on the technical assistance sought by the OSSE over the past year, the agency is poised to present the new definition to its State Advisory Panel this month where it will seek the broad stakeholder input required of IDEA when making such changes to the State Performance Plan. This will allow the OSSE to implement a new definition this upcoming school year and gather the kind of accurate and reliable data required before taking any necessary, effective enforcement actions.

Timely Due Process Hearings (Indicator 17): The critical Indicator 17 on the percentage of fully adjudicated due process hearings within the requisite timeline exemplifies the dilemma presented by the absence of valid and reliable data. After the OSSE's examination of the data for FFY 2006 maintained by the state education agency located within DCPS and the data collection and maintenance methods used in FFY 2007, the OSSE declined to provide unreliable data in its APR for those Federal fiscal years. However, the OSSE has since remedied the problem and implemented an accurate and reliable data system which can provide valid and reliable data for FFY 2008 through a state of the art special education hearing docketing system implemented beginning August 11, 2008. The data reveal that since January 2009, the OSSE has sustained a consistently high level of compliance in the timely adjudication of due process hearings, which should also be considered by the Department in deciding whether to withhold funding:

2009 Due Process Hearing Timely Adjudication Rates			
January	February	March	April
95.36%	91.67%	95.60%	95.24%



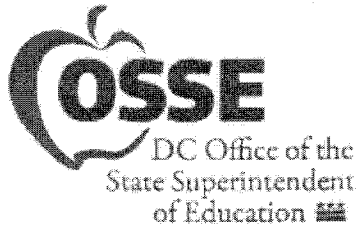
The progress on these indicators would have been hindered absent state-level activity funds. Maintaining those funds is also critical for achieving measurable progress on implementation of due process hearing decisions.

Timely Implementation of Due Process Hearing Decisions. The measureable progress evidenced on Indicator 17 also is demonstrated in other identified areas of noncompliance. For example, for the reporting period of July 1, 2007 to June 30, 2008, the timely implementation of due process hearing decisions with due dates was at 37.1 %. Recently compiled data reveal measureable progress in that timely implementation has risen to 56.5% from July 1, 2008 through May 31, 2009 for all due process hearing decisions with due dates.

Placement Policy. The OSSE implemented a technical assistance program at the beginning of this school year that has resulted in a 45% reduction in the rate of placement of students considered for nonpublic placement out of independent charter schools. As a result of implementing this innovative model, which combines IEP team consultation (including IEP review, resource identification, and solution-focused problem solving) with the provision of targeted technical assistance and training, significantly more students are remaining in their LEAs to be served in the least restrictive environment. To build on this success, the OSSE is currently expanding this initiative to the District of Columbia Public Schools (DCPS), our largest LEA. Implementing this policy requires significant OSSE staff hours which would be jeopardized by withholding of funds.

System of General Supervision. Finally, while the determination letter recognizes that the OSSE has undertaken specific remedial activities to ensure children with disabilities are placed in the least restrictive environment and to develop a system of monitoring, these recognitions are qualified by the statement that the OSSE has not yet conducted general monitoring to ensure compliance. Consistent with its commitment to the Department in the May 15, 2009 progress report, the OSSE introduced a comprehensive monitoring framework to all LEAs in February of 2009, followed up with providing individualized technical assistance on all components of the framework in March and April, and commenced focused monitoring of local educational agencies in May 2009. Significant staff hours will be spent drafting the resultant reports and implementing corrective and enforcement actions. To further improve our system of general supervision and position the state complaint process as a viable alternative to time-consuming and costly due process hearings, the OSSE has drafted revised state complaint procedures. We expect to release these proposed revisions for public comment and finalize before the beginning of the next school year. The effectiveness of the above efforts is dependent on a stable source of state-level IDEA funds.

OSSE's establishment and implementation of the efforts described above demonstrate the OSSE's continued scrutiny and reform of all aspects of the system of general supervision since the transfer of the state-level education functions to this new state agency. The OSSE has the commitment of leadership and the ability to meet its agreements and to sustain steady and measureable progress. Under the OSSE's system of general supervision, the District of Columbia



can attain compliance with IDEA Part B, if provided the opportunity. However, suspending and withholding state-level activity funds will jeopardize outcomes such as those described above in material ways, effectively delaying reform.

Conclusion. In sum, the OSSE requests that the Department reverse its decisions to suspend payment of, and ultimately withhold, FFY 2009 state-level activities funds and instead consider appropriate enforcement action that would hold the District accountable in a manner that helps sustain the OSSE's critical reforms. The serious enforcement actions to withhold and suspend funds are unnecessary to ensure compliance and will exacerbate a complex and difficult undertaking. In fact, these enforcement actions will impede the OSSE's progress during this critical period of reform and compliance and harm the Federal interest the IDEA is intended to protect-the educational outcomes for children with disabilities and due process for their parents.

Instead, the OSSE requests that the Secretary exercise the discretionary authority to enter into an agreement with the District of Columbia to enable the OSSE to remain eligible to receive essential State-level funding while coming into full compliance as soon as feasible. An agreement represents a viable means of bringing about compliance based on the actions OSSE has already taken to comply; the significant commitment of resources and personnel; the ability to come into compliance; and demonstrated ability to make steady and measurable progress toward that objective while such an agreement is in effect.

This is a new agency with new leadership resolute in its commitment to correcting the identified areas of noncompliance that affect the provision of special education and related services to the District of Columbia's children with disabilities. To employ excessive enforcement strategies based on historical relationships and data is unnecessary to correct the noncompliance, is patently unfair, and negatively impacts the very individuals the IDEA is intended to protect - children with disabilities and their parents. I hope that you will reconsider the enforcement action. Please do not hesitate to contact me if you have additional questions or would like to discuss these issues in more detail.

Sincerely,

Kerri L. Briggs, Ph.D.

Acting State Superintendent of Education

Cc: Secretary Duncan

MOA EXHIBIT 3



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 30 2009

Honorable Kerri L. Briggs
Acting State Superintendent
Office of the State Superintendent
Government of the District of Columbia
441 4th Street, NW
Suite 350 North
Washington, DC 20001

Dear Dr. Briggs:

I am writing in response to your June 16, 2009 letter in which the District of Columbia Office of the State Superintendent for Education (OSSE) requests a hearing to appeal the decision in the June 1, 2009 letter issued by the Office of Special Education Programs (OSEP), indicating the U.S. Department of Education's (Department's) intent to withhold 20 percent of the District of Columbia's (DC's) Federal Fiscal Year (FFY) 2009 funds reserved for State-level activities under section 611(e) of the Individuals with Disabilities Education Act (IDEA) in accordance with IDEA section 616(e)(2)(B)(iii) and 34 C.F.R. §300.604(b)(2)(iii). The Department has calculated the withholding amount to be \$479,959, out of the total State set-aside of \$2,399,795 under IDEA section 611(e) and out of the total regular and American Recovery and Reinvestment Act of 2009 (ARRA) FFY 2009 section 611 and section 619 grants of \$33,922,108.

In your letter of June 16, 2009, OSSE also sets forth its position with regard to the opportunity to show cause why the Department should not suspend payment of those funds pending the outcome of the hearing in accordance with IDEA section 616(e)(4)(B) and 34 C.F.R. §300.605(b). OSSE does not contest the determination in the June 1, 2009 letter that DC continues to "need intervention" in meeting the requirements of Part B of the IDEA.

With regard to the request for a hearing, the Department has granted OSSE's request to have a hearing pursuant to the procedures in 34 C.F.R. §§300.180 through 300.183 "to appeal the Department's decision to withhold these funds" in accordance with IDEA section 616(e)(4)(A) and 34 C.F.R. §300.605(a). Under 34 C.F.R. §300.181(b), within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties. You have been informed regarding the designation of a Hearing Official.

With regard to the opportunity to show cause, I have carefully considered the arguments made in your letter and concluded that OSSE has failed to show cause why 20 percent of OSSE's FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA should not be suspended pending the outcome of the hearing. The basis of the decision indicating our intent to withhold funds was not based on a "snapshot of the past" or "the fact that a prior compliance agreement with a different State agency from 10 years ago did not result in compliance," as argued in your letter of June 16, 2009. Under IDEA section 616(d)(2), the Secretary must annually make a determination based on information provided by the State in the Annual Performance Report (APR), information obtained through monitoring visits, and any other public information made available. In making its determination and selecting an enforcement action, the Department considered, among other things, the more updated data provided from 2008-2009 in the FFY 2008 Special Conditions Progress Reports, as well as data from FFY 2007 (July 1, 2007 through June 30, 2008) provided in OSSE's FFY 2007 APR submitted on February 1, 2009.

In last year's June 17, 2008 determination letter, we specifically stated that we did not place OSSE in "needs substantial intervention," which would have required the Department to take more serious enforcement action, because we recognized that OSSE had taken over State-level responsibilities on October 1, 2007 and was beginning to implement several reform initiatives designed to improve its special education program. We advised OSSE that we expected the District "to make significant progress during the 2008-2009 school year in satisfying the Special Conditions and meeting the requirements of the IDEA" and we intended to "carefully review the District's level of progress, to determine if further corrective measures are necessary."

Despite the fact that there has been some improvement in some areas, which we acknowledged in the June 1, 2009 determination letter, the District has not made "significant progress." We do not agree that "present-day facts and circumstances are materially different." OSSE continues to report low levels of compliance with many basic requirements of Part B of the IDEA. For example, OSSE reported in the final FFY 2008 Special Conditions Report, which covered the period from December 18, 2008 through April 18, 2009, that only 56 percent of children whose initial evaluation deadlines fell within the reporting period received a timely initial evaluation and only 47.2 percent of children with disabilities whose reevaluation deadlines fell within the reporting period received a timely reevaluation. This means that 44 percent of children did not receive a timely initial evaluation and 52.8 percent of children with disabilities did not receive a timely reevaluation during the reporting period. OSSE did not address these two longstanding areas of noncompliance, over ten years old, in its June 16, 2009 letter. The failure of a State to ensure the provision of a timely initial evaluation and reevaluation results in a delay in the determination of whether a child is or continues to

be a child with a disability and in the provision of services that appropriately meet a child's current educational needs.

Additionally, OSSE reported in the final FFY 2008 Special Conditions Report that only 34.54 percent of hearing officer decisions were implemented in a timely manner during the reporting period of December 18, 2008 through April 18, 2009. This means that 65.46 percent of hearing officer decisions were not implemented in a timely manner during the reporting period. In the June 16, 2009 letter, OSSE reported that "for the reporting period of July 1, 2007 to June 30, 2008, the timely implementation of due process hearing decisions with due dates was at 37.1%" and "recently compiled data reveal that measureable progress in that timely implementation has risen to 56.5% from July 1, 2008 through May 31, 2009 for all due process hearing decisions with due dates." This means that from July 1, 2008 through May 31, 2009, 43.5 percent of hearing officer decisions with due dates were not implemented in a timely manner. This is also a longstanding area of noncompliance that is over 10 years old. The implementation of hearing officer decisions in a timely manner ensures that a child with a disability is not denied the services a hearing officer has determined are necessary for the child to receive a free appropriate public education. This is an essential part of establishing an effective due process system.

One of the State's most critical functions under the IDEA is the development and implementation of a general supervision system that is capable of identifying noncompliance with the requirements of Part B of the IDEA by local educational agencies (LEAs) and ensuring the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. OSSE is responsible for monitoring the implementation of Part B of the IDEA in the District of Columbia Public Schools (DCPS) and charter schools that elect to be treated as LEAs for the purpose of the IDEA. OSEP first identified DC's failure to ensure identification and timely correction of noncompliance under Part B of the IDEA in its June 18, 2002 monitoring report. This area of noncompliance was first addressed in the Special Conditions on DC's FFY 2005 IDEA Part B grant and has continued on each grant to DC since that time. Therefore, when OSSE took over State-level education responsibilities on October 1, 2007, it was aware the lack of an effective monitoring system was part of the Special Conditions imposed on DC's IDEA Part B grant award. Further, DC's failure to effectively monitor compliance with the requirements to ensure placement in the least restrictive environment has been included in the Special Conditions on each IDEA Part B grant award from FFY 2001 to the present. Yet, OSSE has not yet implemented an effective monitoring system. The June 1, 2009 determination letter acknowledged that OSSE has developed a self-assessment and a monitoring manual that were submitted with the May 15, 2009 progress report. In the June 16, 2009 letter, you report that OSSE commenced focused monitoring of LEAs in May 2009. While these are positive steps, it still means that DC has not demonstrated that it has an effective monitoring system, and

the Department cannot yet determine how effective the system will be in identifying and correcting noncompliance with the requirements of Part B of the IDEA.

For the third consecutive year, DC did not provide valid and reliable data for Indicators 9 and 10. These indicators measure whether any districts have disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that was the result of inappropriate identification. This is an important way to ensure that students, especially those from racial and ethnic minorities, are identified as students with disabilities and in specific disability categories only using appropriate identification procedures. All States are required to provide data for these indicators, except for those whose student population consists entirely of a single race or ethnicity. Other States with LEAs whose student population consists primarily of a single racial or ethnic group have been able to provide valid and reliable data for these indicators; therefore there is no reason why OSSE should not be able to do so.

For two consecutive years, DC did not provide valid and reliable data for Indicator 17 regarding the percent of adjudicated due process hearing requests that met the timeline required by 34 C.F.R. §300.515. The issuance of timely due process decisions is a key component of an effective due process system. In DC's FFY 2007 APR, submitted on February 1, 2009, OSSE reported that methods used prior to August 11, 2008 yielded unreliable data. In your June 16, 2009 letter, you indicated that OSSE has remedied the problem so that valid and reliable data can be provided for FFY 2008 and you provided data from January 2009 through April 2009. If OSSE is able to provide valid and reliable data on the percent of adjudicated due process hearing requests that met the required timeline from August 11, 2008 through June 30, 2009, OSEP will consider OSSE to have sufficiently addressed this area in which the State "needs intervention."

OSSE has also failed to demonstrate progress in the area of secondary transition, which enables a student to make a successful transition from school to post-school activities, including postsecondary education, vocational education, integrated employment and independent living. OSSE reported only 29.15 percent compliance in its FFY 2007 APR for Indicator 13, which measures the percentage of youth aged 16 and above with an individualized education program (IEP) that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals. This represents slippage from the already low FFY 2006 compliance level of 54 percent. Further, the State was unable to demonstrate it corrected prior noncompliance related to these requirements. OSSE did not address this area of noncompliance in its June 16, 2009 letter.

We appreciate the initiatives OSSE is undertaking to correct deficiencies in its special education program and the stated commitment the new leadership has made to the reform of special education protections and services. However, the Department can no longer delay more serious enforcement action because of new leadership or a new agency. DC

has a long history of turnover in the administration of the school system as a whole and in the administration of its special education program in particular. In the last three years, there have been four special education directors. In prior years when we have declined to take more serious enforcement action because new leadership had just arrived, the District continued to fail to meet many of the basic requirements of Part B of the IDEA. While the State organization and leadership changes, deficiencies in addressing the needs of children with disabilities remain, and many continue to be denied the free appropriate public education which they are entitled to under Part B of the IDEA.

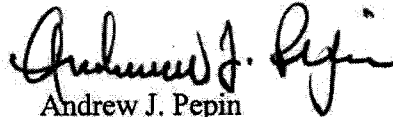
This year, the third consecutive year that DC “needs intervention” in meeting the requirements of Part B of the IDEA, IDEA section 616(e)(2)(B) compels the Department to take one or more of six specified enforcement actions. We thus expressed our intent to withhold 20 percent of OSSE’s FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA until DC has sufficiently addressed the areas in which it “needs intervention.” None of the IDEA Part B funds that are distributed to DCPS and charter school LEAs for the provision of special education and related services are subject to the Department’s enforcement action. We understand that withholding these funds may have an impact on State-level activities, but any time the Department withholds funds, an option Congress provided in the IDEA, there will be an impact. We chose to indicate an intent to withhold the smallest percentage of State set-aside funds that is permissible under IDEA section 616(e)(2)(B)(iii). As a result, OSSE would receive 80 percent of its FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA.

OSSE proposed that the Department, in the alternative, enter into an agreement with DC to enable OSSE to remain eligible to receive 20 percent of its FFY 2009 funds for State-level activities as a means of bringing about compliance. We have entered into agreements with DC before with little result. For example, every year since FFY 2001, the Department has imposed Special Conditions on DC’s grant award under Part B of the IDEA. DC has assured the Department that it will meet all grant terms and conditions and all applicable requirements, but it has not carried out its commitments. Agreements alone with no consequences have repeatedly failed to result in DC achieving compliance with critical requirements of Part B of the IDEA. Therefore, in addition to imposing Special Conditions under section 616(g) of the IDEA and 34 C.F.R. §80.12, the Department is exercising its authority to indicate its intent to withhold 20 percent of DC’s FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA until DC has sufficiently addressed the areas in which it “needs intervention.”

The Department is not taking this enforcement action lightly. It is only after ten years of documented noncompliance that continues to the present day that we have determined our intention to withhold, and to suspend 20 percent of OSSE’s FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA. When OSSE can demonstrate

to the Department's satisfaction that it has sufficiently addressed each of the areas in which the State "needs intervention," the Department will release those funds. We believe that this enforcement action is necessary and appropriate and will accelerate OSSE's progress in correcting noncompliance with the fundamental requirements of Part B of the IDEA, and ultimately result in positive benefits for DC's children with disabilities. For all of the reasons noted above, we do not believe that OSSE has provided sufficient cause why the Department should not suspend payment of 20 percent of OSSE's FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA in accordance with IDEA section 616(e)(4)(B) and 34 C.F.R. §300.605(b) pending the outcome of the hearing. Therefore, the Department declines to reverse its decision and will suspend payment of 20 percent of OSSE's FFY 2009 section 611 funds reserved for State-level activities pending the outcome of the hearing you requested. We look forward to DC's future compliance with the applicable requirements of Part B of the IDEA.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew J. Pepin".

Andrew J. Pepin

Executive Administrator

delegated the authority to
perform the functions of the
Assistant Secretary for OSERS